326–328 (Endorsed:) No. 5153. United States Circuit Court district of Colorado. The United States vs. Fred Light. Complainant's Testimony and Exhibits 1-4 inclusive. S. C. Hinsdale, Examiner. Filed Dec. 22, 1908. Charles W. Bishop, Clerk.

Forty-first Day, November Term, Tuesday, December 29th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge and other officers as noted on the third day of November, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard, Ernest Knaebel, Esquire, appearing as solicitor for the complainant;

And thereupon, on his motion, it is ordered by the court that all depositions now in the office of the clerk of this court in this case, be opened, published, and filed, which is accordingly done.

329 UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States Within and for the District of Colorado.

No. 5153. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Be it remembered, that on the eighth day of October in the year of our Lord one thousand nine hundred and eight, in pursuance of the notice and proof of service thereof hereto attached, the parties to the above entitled cause appeared before me, Clifford G. Rowe, Special Examiner in Chancery of the Circuit Court of the United States for the district of Colorado, at my office in Glenwood Springs, State of Colorado; the complainant in said cause by Ernest Knaebel, Esq., and the defendant by Ethelbert Ward, Esq.

And on the said above mentioned date came also before me William W. Williams, Marcus Lafayette Shippie, William P. Finley, Harry M. Shuttleworth, U. M. Trout, W. L. Girdner, J. W. Zimmerman, Frederick Light and E. M. Ammons, to testify as witnesses on behalf of the defendant; and also came Harry H. French to

testify as a witness on behalf of the complainant in said cause; and the said witnesses having been by me first duly cautioned and sworn according to law respectively, to testify the truth, the
330 whole truth, and nothing but the truth in the matter and suit in controversy aforesaid, were severally examined before me on oral interrogatories propounded to them respectively by counsel, as in their several depositions fully appear, that is to say:

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Defendant's Witnesses.

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Complainant's Witness.

	Direct.	Cross.	Redirect.	Recross.
Harry H. French	158	161	163	164
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WILLIAM W. WILLIAMS, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. Mr. Williams, where do you reside?
A. Pitkin County; post-office Snow Mass.
331 Q. In reference to Mr. Fred Light's ranch where do you reside?
A. Why, about two miles and a half east.
Q. On what creek do you live?
A. Snow Mass.
Q. And where is your ranch,—the Williams Brothers ranch?
A. Snow Mass, Capital Creek.
Q. How long have you lived in that vicinity, Mr. Williams?
A. About twenty years.
Q. What is your occupation?
A. Cattle ranching.
Q. With whom are you doing business?
A. Well, most everybody.
Q. I mean who are your partners?

A. Oh, my brothers Harry C. and J. W. Williams.

Q. How long have your brothers been doing business in that country?

A. We have been doing business together on the ranch four years.

Q. How long have you been running cattle?

A. Four years in our own name,—Williams Brothers.

Q. How long have you been handling cattle?

A. I have been handling cattle nearly four years in our own names, and in father's name for twenty years.

Q. On what range have you been handling cattle?

A. Snow Mass, Capital Creek and Sopris.

Q. How far to the northwest have you handled your cattle from your place?

A. About twenty miles.

Q. How long have you been familiar with the range between Snow Mass on the east and Crystal river on the west?

A. Fifteen or eighteen years.

332 Q. How frequently do you go over this range?

A. Three and four times a year maybe, and then maybe go down there and stay a week at a time.

Q. How many acres of land have the Williams Brothers?

A. We have about nineteen hundred acres.

Q. And how many cattle have you been running the past two years?

A. About eight hundred head.

Q. Have you seen the range that you have just spoken of during the year 1907?

A. Yes Sir.

Q. How familiar are you with the condition of the range during the year 1907?

A. Very familiar.

Q. How about the year 1908?

A. Familiar with it.

Q. What is the condition of the country in reference to fences throughout that territory; where are the fences?

A. The fences on the west are about half a mile from Sopris Creek, running up to within a mile of the Reserve.

Q. Beginning from what point?

A. Beginning at Sopris Creek below Fred Light's.

Q. At whose fence?

A. Fred Light's fence.

Q. Where are the fences along the Roaring Fork river; how far do they extend; I mean from the river?

A. From Snow Mass, the mouth of Snow Mass to Emma, about a quarter of a mile south of the river, South and East Sopris.

Q. How far may you go in the direction of Carbondale on that range before you strike fences?

A. I believe about the first fence you strike is the Big Four Ranch.

333 Q. How far is that from your ranch?

A. About sixteen or seventeen miles.

Q. How does that run with reference to cutting off the range, if at all?

A. It has no interference with the range at all.

Q. What is the character of the country southeast of you, toward Aspen in reference to fences?

A. Well, it is fenced in different places, but nothing to stop any cattle from going in there.

Q. Is there any range for cattle?

A. Yes.

Q. Between you and Aspen?

A. Yes, Sir.

Q. About how far is it to Aspen from your place?

A. About twelve miles air line I would judge.

Q. About how wide is the unfenced range; about what is the average width of the unfenced range, beginning at Fred Light's place, up towards Carbondale; how wide is that?

A. About seven miles, running north and south, and about fifteen or sixteen miles running east and west.

Q. Does that include any portion of the Forest Reserve?

A. A portion of it, yes.

Q. How much of *it* that would be in the Forest Reserve?

A. Well, I won't say definitely; I would say five miles east and west, or I should say five miles north and south—and does not interfere east and west.

Q. You spoke of the range being about seven miles wide?

A. Yes.

Q. How much of this seven miles in width is in the Forest Reserve?

A. I should judge about two miles.

334 Q. What is the character of the grass upon the open range outside of the Forest Reserve this year.

A. Bunch Grass, blue stem, wild oats, wild peas.

Q. What is the character of the grass in reference to quantity and quality?

A. Very good,—the best.

Q. How is it in comparison with years past?

A. Well, it is as good as I can remember.

Q. What evidences are there upon the range you have described, lying between your place and Carbondale, of the cattle that have been on there this year?

A. Why good shape, fine shape.

Q. What do you mean by "good shape"?

A. Well, what we call grass beef area.

Q. What is the present condition of that range?

A. Very good shape.

Q. What evidences are there, if any, of that range having been overfed?

A. Why, not any.

Q. What evidences were there during the year 1907, if any, of the range having been overstocked?

A. Not any.

A. Or over-fed?

A. Not any.

Q. What was the condition of that range during the year 1907?

A. Good range,—fine grass.

Q. Have you an idea of the number of cattle that have been ranging in that territory this year,—1908?

A. Why about two thousand head, I should judge.

Q. What is the capacity of that range in reference to that number of cattle?

A. Why, it feeds them all.

335 Q. What, if any, would it support more?

A. Yes.

Q. Approximately how many?

A. Well, that is a pretty hard thing to say, just how many; I would say five hundred head more.

Q. What portion of the range have you reference to?

A. Of that range,—that is I mean the forest reserve, what is now the forest reserve, and the public domain.

Q. In the territory just described?

A. Yes.

Q. Are you familiar with the number of cattle that ran there some six or seven years ago?

A. Yes, quite familiar.

Q. Approximately how many would run upon that same range?

A. Well, about three thousand head, I should judge.

Q. Were there then any evidences of over-grazing or over-feeding?

A. No, there were not.

Q. Have you at any time noticed the range having been badly over-eaten or over-grazed.

A. At no time, but in certain portions around salt beds, or around certain fences,—something like that.

Q. What are the feeding qualities of blue-stem?

A. The best grass we have.

Q. What is the comparison between the higher range in the forest reserve and the lower range spoken of, in reference to the fattening qualities of cattle?

A. The lower range is the better. By going higher in the summer time the grass is soft, it does not put on the fat that the lower range does, and when the grass becomes harder higher up the snow usually drives the cattle down on to the lower range,

336 so consequently we do not get the benefit of the higher range that we do the lower, which I presume would be nearly as good if we could get the benefit of it; it is covered with snow now.

Q. Is there any difference between hardened grass and green, fresh grass?

A. Yes.

Q. What is the difference in reference to the fattening qualities?

A. Makes the fat harder.

Q. Did you notice that range north of Mr. Light's ranch this Spring?

A. Yes, sir.

Q. What was the condition of the grass during those times you noticed it?

A. Very good. It is as good as I ever seen it.

Q. What evidences, if any, were there of any over-stocking of that range?

A. Not any this year.

Q. What about the present condition now, at this time?

A. Very good.

Q. As compared with former years?

A. About the same as former years.

Q. And no evidence of over-stocking or over-grazing?

A. No.

Q. How is that range watered?

A. Why, there is small creeks and springs.

Mr. KNAEBEL: May I ask what range you refer to?

Q. The range between your house and Carbondale.

A. Small creeks and springs.

Q. From your experience as a cattle man what is your opinion as to whether or not the range is well watered or poorly watered?

A. Well watered.

Q. Are you familiar with the Crown country?

A. Fairly familiar with it.

337 Q. How is that country in reference to grass and water?

A. Very good.

Q. As a cattleman would you say that the water is inaccessible and far away?

A. No, sir.

Q. What distance would an animal ordinarily have to go in that country to get water?

A. I don't believe the furthest would be over a mile and a half from any portion of the country.

Q. From your experience as a cattleman what effect would that have, if any, upon the animal.

A. Well, for just stock cattle it wouldn't have any particular effect on them; of course for beef it would effect them.

Q. To what extent?

A. Well, which do you mean?

Q. The beef, I mean.

A. Well, I don't believe you can put beef on cattle by driving them off far, or having them go far.

Q. How many portions of that territory are there that would necessitate cattle going that distance?

A. Well, there is very few; in a portion of what is known as the "Crown country", and I would say that is about all that I know.

Q. Mr. Williams, the territory—unfenced territory between East Sopris Creek and the forest reserve,—you are familiar with that?

A. Yes, sir.

Q. Is there any water there?
A. Yes, sir.
Q. Outside of the forest reserve?
A. Yes, sir.
Q. At what points is there water?
338 A. There is water below Mr. Light's ranch—that would be west and north—and above Mr. Shuttleworth's ranch, which would be south; and also west most anywhere from Mr. Light's ranch; most any of that country in there you can get water.
Q. At what distances apart?
A. Oh, not over a quarter of a mile, or half a mile at the furthest.
Q. What is the condition of the grass on that particular range outside of the forest reserve this year?
A. Mostly blue-stem.
Q. Not as to quantity, but quality.
A. Plenty of feed for the stock that has been there.
Q. What indications are there of over-grazing or over-stocking this year?
A. Not any.
Q. How about last year?
A. Not any last year.
Q. Are you familiar with Mr. Light's custom of handling his cattle?
A. Yes, sir.
Q. Where does he turn them out in the Spring?
A. Usually turns them north of his place,—a few west I suppose, but most of them north.
Q. What is the condition of the range there in the spring where he turns them?
A. Why it supports the cattle; it is the earliest range we have, and they usually get the first grass that comes.
Q. Did you notice that that range north of his place was badly over-eaten this spring?
A. No, sir.
Q. Was it?
A. That is, not from the condition of the stock.
Q. Was it badly over-eaten?
A. No, sir.
339 Q. When is it practicable for cattle to begin grazing upon the forest reserve southwest of Mr. Light's place?
A. Very little before about the 10th of June in ordinary years, I don't believe.
Q. What is the character of the country, the topography of the country north of Mr. Light's ranch?
A. It is,—well ordinary cattle country, mountainous, and blue stem grass and brown grass, some bunch grass,—smooth enough.
Q. Is it easy or difficult for catle to graze upon that?
A. Easy.

Mr. WARD: We wish to introduce Defendant's Exhibit E.

Q. The country in the background of Exhibit E is the country

that you have just spoken of as in what direction of Mr. Light's ranch?

A. North.

Q. Before the forest reserve was established what was the custom in reference to handling cattle in that territory as between the low lands and the high grounds?

A. We usually turn out about the first of April on this mountain here, and also back of our own place, and leave them there for a month or such a matter and then take them up on East Sopris, west and south of Mr. Light's and up Capital Creek.

Q. Do you have any difficulty in keeping them up there?

A. Yes, sir. We have to take them up, oh, sometimes three and four different times.

Q. What is the object of that?

A. Well, they just keep coming back and we want to keep them up.

Q. What is the object of keeping them up there?

A. Well, we like to have this range that you have spoken
340 of here for the fall and winter range for cattle coming down in the fall so there will be some grass there in the fall.

Q. Isn't it a fact that there is not enough grass in the lower range to support them?

A. Yes, sir.

Q. That there isn't enough?

A. There is enough.

Q. But you wish to save it for the fall and winter grazing?

A. For the fall and winter grazing.

Q. What effect does putting salt upon the high range have in getting cattle up there?

A. By salting, the cattle run on the salt-beds.

Q. In your opinion as a cattle man, would the fact that salt has been placed in a large number of places upon the forest reserve have any tendency to toll Mr. Light's cattle up there?

A. Yes, sir. The cattle that has been on the range prior to 1908 will drift back to the range to where they have been running years before.

Q. And if it should appear that Mr. Light had bought a new bunch of cattle in the winter of 1907 and '8, that had come from an entirely different territory, would they have a tendency to go up on this range?

A. They would never see the forest part of it if they wasn't driven there.

Q. What effect would the driving of other cattle, and the putting of *salt* have upon Mr. Light's cattle?

A. Well, the old cattle would naturally go there, and the new cattle wouldn't move without they were driven, ordinarily, some would go there.

Q. Well, they do stray, though, over that entire territory.
341 A. Yes, sir.

Q. What per cent., if you can say, of the cattle, before

the establishment of the forest reserve, would voluntarily go upon the high range?

A. Well, that is pretty hard to say; not over a third I shouldn't judge.

Q. Would they be up there all the time during this grazing season?

A. Nearly all the time.

Q. What is the condition of the banks of Sopris Creek in reference to cattle getting to water in that territory?

A. They can get to water, very easily accessible to the water.

Q. In reference to the other grass there, what is the condition as to the accessibility to water?

A. Easily.

Q. Have you taken out a permit for grazing cattle in the season of 1908?

A. Yes, sir.

It is stipulated by and between the respective solicitors that Defendant's Exhibit H is a blank form of the regular application for a grazing permit issued by the Forestry Department for the Holy Cross Reserve.

Mr. WARD: We introduce Defendant's Exhibit H.

Mr. KNAEBEL: Objected to as immaterial.

Q. (Showing witness Exhibit H.) Do you recognize that as an application similar to that which you signed?

A. Yes sir.

Q. I call your attention to the following: "I also hereby agree that I will allow my stock to graze only upon the area specified in the permit, and that I will obey and support all the laws
342 and regulations governing national forest reserves." Is it possible for you to comply with that portion of the application?

Mr. KNAEBEL: This is objected to as incompetent and immaterial.

A. We were not notified to range our cattle on any specified portion of the range,—that is, of Capital Creek or Sopris Creek.

Q. Is it possible for the successful handling of cattle in your country for you to comply strictly with the requirements of the permit and the application for the permit?

Mr. KNAEBEL: This and all similar questions are objected to upon the grounds that they are incompetent and immaterial, without repeating the same objections as to future questions.

Q. (Question read).

A. I don't know as the permit interferes so much with the industry of the cattle raising.

Q. Are you familiar with the provisions of the permit and the application?

A. I knew it but I have forgotten (reading application).

Q. What is the custom of cattle men in your vicinity, of handling the cattle during the grazing season?

A. We usually turn them out in the Spring of the year when the grass is favorable on the lower ranges, and leave them there until it becomes good enough for them up higher.

Q. What custom have you, if any, in reference to herding them and driving them from place to place?

A. We don't herd them any, hardly.

343 Q. What effect, if any, upon the cattle business would continuous herding of cattle have?

Mr. KNAEBEL: That is objected to as immaterial.

A. It would have a very bad effect on them.

Q. Are you familiar with the rules and regulations of the Forestry Department in reference to herding and handling cattle, as directed by rangers?

A. No, I am not.

Q. If the rules and regulations gave rangers power to move your cattle, handle and herd them at any time, what effect would that have upon the cattle business?

Mr. KNAEBEL: Same objection.

A. The effect would be bad and it would be almost impossible to do it in that country; that is, certain portions of cattle. Of course you could get enough and move the whole bunch, but to move certain ones it would be hard to do.

Q. I hand you complainant's Bill, and call your attention to Regulation 47, which you will please read.

(Witness reads Regulation 47).

Q. What effect, if any, would restricting the enforcement of Regulation 47, have upon the cattle?

Mr. KNAEBEL: Objected to, and I move that the answer be stricken out, as incompetent and immaterial.

Q. Have you noticed the forest range in the neighborhood—I mean the forest reserve in the neighborhood of Mr. Light's ranch this year?

A. Yes, sir.

344 Q. What is the condition there in reference to the grass, and so on, at the present time?

A. Well, about the same as on the public domain.

Q. Where do cattle graze upon the forest reserve, in the trees or out of the trees?

A. Mostly out of the trees.

Q. Is there any grass under the trees in the forest reserve?

A. Not in the thickly treed country.

Q. You have seen cattle grazing upon what is now the reserve, for a number of years past?

A. Yes, sir.

Q. What effect, if any, has that grazing had upon the injury to trees?

A. Not any that I ever knew.

Q. Mr. Williams, are you familiar with the country between Mr. Light's place and the forest reserve in reference to trails?

A. Yes sir.

Q. Are there any well defined trails leading from Mr. Light's place, or the vicinity of Mr. Light's place, into the forest reserve?

A. Not any.

Q. What is the nature of the trails in that territory?

A. There is different trails running to water holes in different directions. A trail would lead maybe quarter of a mile toward the forest boundary, and then it ends—maybe switch off and go in another direction, and maybe take another trail that will go another quarter of a mile, maybe half, toward the forest reserve, and then that ends. There is no well defined trail from Sopris Creek to the forest reserve, or the Hay Park, as it is known.

345 Q. Are you familiar with Mr. Light's fences in the neighborhood of his ranch near his house?

A. Yes sir.

Q. Where is his meadow feed lot, or feed field?

A. West and north of his house.

Q. The west line of his meadow feed field,—is that the most westerly fence of Mr. Light's?

A. No, sir.

Q. Where is his westerly fence?

A. I would judge about a half a mile west, upon the mountain side.

Q. Do you know whether or not there are any gates or connections between his westerly pasture and his meadow pasture on the west side?

A. Yes, sir, there is a gate from his pasture to the range—or bars, rather.

Q. But in reference to the meadow lot, what gates or openings are there, if you remember?

A. He has two gates that I know of.

Q. Where are those two gates.

A. One of them would be south of his residence, and one west; one on the west side of Sopris Creek and one on the East side.

Q. The one that you speak of as being on the west side of Sopris Creek, is that up close to the house?

A. Why, about three or four hundred yards, I would say.

Q. From the house?

A. Yes, sir.

Q. The other your spoke of is down on the road?

A. Yes, close to the road.

Q. Leading to the northeast of the hill?

A. Well, no, the one I have reference to is on the south side of the house.

346 Q. But this is right close to the house?

A. Yes, close to Mr. Light's—to Mr. Finley's and Mr. Light's ranch.

Q. Do you remember the kind of fence that north and south enclosure fence is?

A. Of the meadow land?
Q. Yes.
A. Why it is a wire fence.
Q. That interior fence running north and south?
A. Yes sir.
Q. Is the country north and northwest of Mr. Light's ranch available for grazing at any other period than in the Spring.
A. Yes, sir.
Q. Through what period?
A. Almost any period. North, you say, of Mr. Light's ranch?
Q. Yes, north and northwest?
A. Almost any period there is cattle or horses on that range.

Cross-examination.

By Mr. KNAEBEL:

Q. How long did you say you had lived in that country?
A. Twenty years.
Q. Now this reservation was only created in what years?
A. Reservation?
Q. Forest Reserve?
A. We first paid our fees in 1907.
Q. Well, before the Reserve was created did you and your neighbors make any use of the high land that now lies within the reservation?
A. Yes, sir.
Q. Would you do that every year?
A. Yes sir.
347 Q. How many cattle would you say, on the average, were owned and grazed in that region before the reserve was created?
A. I would say on an average about two thousand head.
Q. About the same as there are now?
A. Yes, sir.
Q. You spoke of a very large range, Mr. Williams, extending from—I believe you said about sixteen miles toward Carbondale in one direction and twelve miles toward Aspen in another?
A. Yes, sir.
Q. And of a certain width, seven miles in width—no, I have forgotten the width.
A. Yes, about seven miles.
Q. Now you don't mean to testify that that is an absolutely open strip of those dimensions, do you?
A. Why there is ranches situated in between.
Q. How?
A. There is ranches situated in between.
Q. Mr. Light claims to use a range that he reaches by putting out his cattle on the northeast of his ranch. How much open range on the public domain would those cattle naturally range over if they were put out there? I am speaking of the public domain only.
A. Why, in the neighborhood of two thousand acres.

Q. Well, please describe that.

A. Well, from Mr. Light's east—well, let's see, how I will describe it. I don't believe I can describe it to you very well without a photograph or something of it.

Q. You understand I am speaking about a range that is not interfered with by fences?

A. Yes, sir.

348 Q. Or by any kind of country that cattle won't go over?

A. Yes, sir, they can go over it.

Q. Now you may describe it as well as you can,—the place.

A. Why it is just a mountainous country; there is nothing to stop them from going over it any more than——

Q. Is that the best answer you can give?

A. (Witness continuing.) —any more than any other country.

Q. Can't you describe it in reference to the rivers and towns?

A. There is no towns, no rivers, no fences; there is nothing to stop them.

Q. Now did you ever know of Mr. Light's cattle going up to Aspen, and in that direction?

A. Yes, sir.

Q. How many?

A. I wouldn't say; I have seen several bunches go past our house.

Q. How do they get up there?

A. They go up Snow Mass for—they can either go four miles of Snow Mass or they can go a mile and cross over and then strike the public domain,—a mountainous country.

Q. After they get to the public domain where do they go, if they keep on going?

A. They could go over to Leadville, I guess, if they wanted to.

Q. In what direction, I mean, toward the forest reserve?

A. In what direction toward the forest reserve?

Q. In what direction toward the forest reserve?

Q. Yes, with reference to the forest reserve?

A. Well, they wouldn't be within two or three miles of the forest reserve.

349 Q. As a matter of fact, haven't you known of cattle that were in that territory and got into the forest reserve?

A. Why I think so.

Q. And don't they usually do it?

A. No, sir, not always. Mr. Bersonsen ranges his cattle up there; he has about six hundred head. I don't know how many he took out a permit for, I guess Mr. French could tell you that. Last year he didn't take out any permit at all and he had over three hundred head; he ranged them on the public domain.

Q. What did you say the object was of your driving cattle up on the forest reserve, where the forest now is?

A. So that we could have the range for the fall and winter.

Q. You always feed your cattle during the winter, don't you, to a certain extent?

A. Yes, sir.

Q. Does Mr. Light do that?

A. Yes, sir.

Q. Does Mr. Light keep his fences up during the winter so that his cattle can go out upon the open range?

A. To a certain extent, yes.

Q. But not entirely?

A. No.

Q. Do you all depend, more or less, then, during the winter, upon the grasses of the range around the ranches there?

A. Not during the winter.

Q. Well, you leave your fences down during the winter don't you?

A. Why do we leave them down?

Q. Well, you answer that.

A. Because we don't put them up.

Q. Your cattle stray out upon the range during the winter at certain times, don't they?

A. At certain times.

350 Q. When there isn't too much snow on the ground?

A. Yes, sir.

Q. And if there is not too much snow on the ground they can graze on it during those times?

A. Yes, sir.

Q. Now please state again what the object is of driving your cattle, as you say you have done, upon the forest reserve?

A. I didn't mean to state that we exactly drove them on the forest reserve, as I understand where the line of the forest reserve is now; we drive them to the forest reserve line as near as we can know where it is, and very seldom at any portion of the range do we drive them beyond the forest line. There is what is known as the "beaver dams"; we take them beyond the forest line very often in the spring of the year,—not always.

Q. Do you know where the forest lines there are?

A. Yes, sir, I think I do; at least I see them posted up, and what the rangers has showed me where the line went through.

Q. Well, what do you drive them at all for? Go back to the time before there was any grazing fee, or any forest reservation; what did you drive them up into that country for?

A. Why, to get them off of the fall range.

Q. If this range is what you have testified, what was the object of taking your cattle away from it at all?

A. Which range?

Q. What is now the public land around these ranches?

A. Well, we take them very close to the ranches?

Q. Now please answer the question the way I put it; we don't get anywhere if you don't do that.

351 (Question read by stenographer.)

A. So as to have a fall range.

Q. You have testified on your direct-examination, referring, I believe, to the range in a general sense, that about two thousand head of cattle were pastured on it this last year. Now what proportion of those cattle made use of the forest reserve?

A. What portion of the cattle?
Q. Yes.
A. I would say about a third of them.
Q. Do you know?
A. Why no, there is no way of knowing.
Q. Or are you just guessing at it?
A. Guessing.
Q. Did you ever make any investigation concerning it?
A. Yes, sir. Not particularly to be testified or examined on.
Q. Do you mean that only one-third of all the cattle in that vicinity ever got up into, or used the forest range?
A. About one-third, yes.
Q. You have answered Mr. Ward that the range feeds all of these two thousand head of cattle, has fed them in the past and would support them now. What did you mean by "range"; what part of the land with reference to the public lands, and the forest reserve?
A. Why both of them.
Q. You included them both?
A. I included forest reserve and public domain.
Q. Then you don't mean to testify, Mr. Williams, that the vacant public domain around there would be good enough range for all of those cattle throughout the grazing season if they were confined to that?
352 A. For two thousand head?
Q. Yes, sir.
A. Yes I believe it would, if they wasn't disturbed.
Q. Would be good and they would fatten on it, would they, and make good beef?
A. Yes, sir, about the same as they do now; maybe not quite so well, but they would exist and grow.
Q. Did you see Mr. Light drive any of his cattle on the forest reserve this year?
A. No, sir.
Q. And yet you testified that if Mr. Light had new stock, stock new to that region and they appeared in the forest reserve they must have been driven there?
A. Not all of them; some will naturally drift toward the forest reserve, or any other direction, as far as that is concerned; strange cattle turned out in any new locality will drift in different directions, but most of them will drift from where they were ranged the year before, or previous years.
Q. What per cent of the people in that vicinity drove their cattle at all toward the forest this year?
A. I believe most of them.
Q. What is that?
A. Nearly all of them.
Q. Do you know that?
A. Yes.
Q. Do you know where they drove them; how near to the forest?
A. How near?
Q. Yes.

A. Our cattle, and the neighboring cattle in the Capital Creek district was driven within about a mile and a half of the line of the forest reserve—maybe two miles; the cattle on Sopris
353 Creek I don't know how far they were driven.

Q. Who else drove the cattle?

A. Mr. White, Mr. Hart, Mr. Cookman, and I believe that is all. We just got them all together and took them up.

Q. You said that the range north of Mr. Light's place was very good this spring.

A. Yes sir.

Q. What month do you refer to?

A. June, and portions of July.

Q. And that range is not by common consent, or otherwise, given up to Mr. Light, is it?

A. No, sir.

Q. Other people use that range besides him?

A. Yes, sir.

Q. Did you see Mr. Light turn out his cattle this year?

A. No, I did not.

Q. You said that he usually turned them out to the north?

A. Yes.

Q. And a few to the west? Is that correct?

A. Yes, sir.

Q. Has he done that every year that you know of?

A. Nearly every year; I don't remember seeing him turn them out, but I saw the cattle there.

Q. Every year?

A. Yes sir.

Q. That of course is at the time before the forest grazing is available?

A. Yes sir.

Q. Do you know how many cattle grazed on that area north and northwest and northeast of Mr. Light's this spring?

A. No, I don't; we bought Mr. Light's cattle and turned them out up Capital Creek and they crossed over toward the old range, and what per cent. of them I don't know, was in there.

354 Q. Well, whose else cattle were in there?

A. Mr. Finley turns his in there.

Q. Any one else?

A. Well, that is about all that particularly turns them in there.

Q. Mr. White's cattle in there?

A. Yes, his cattle were in there.

Q. Mr. Cookman's?

A. No, not as a rule.

Q. I am talking about this year, as a matter of fact.

A. Mr. White turned his cattle different this year than he did other years; he turned them east, or north of Mr. Light's ranch; they drifted up west of his ranch back to their own range between Capital Creek and Sopris Creek where ordinarily he would take them up Capital Creek and then they would go to their range between Capital Creek and Sopris Creek.

Q. Do you know Mr. Light's present brands?
A. Yes sir.
Q. What are they?
A. He calls it "Lazy T. Open A." I believe.
Q. Has he another brand too?
A. Well, Mr. Light—I believe that is his son's brand.
Q. Have you been up in the forest this year?
A. Yes sir.
Q. Did you see any of Mr. Light's cattle in the forest?
A. Very few.
Q. You were not up there looking for them, were you?
A. Not in particular, no.
Q. But you saw some?
A. Yes sir.
355 Q. Of those brands?
A. Yes sir.
Q. "U Slash U"?
A. Yes, sir.
Q. And the other brand, what did you say that was?
A. "Lazy T. Open A", I believe.
Q. Did you see some of those in the forest too?
A. Yes, sir.
Q. When you said that the range was well watered, what range did you refer to, now; with reference to the public lands alone, or the public lands including the forest?
A. Either is well watered.
Q. You know what I mean when I say "well watered"?
A. Yes, sir.
Q. I refer to the availability of the water for the stock.
A. Yes, sir.
Q. And for keeping fat on the stock, if they have got any.
A. Yes, sir.
Q. Now do you still adhere to your answer that the range outside of the forest is well watered throughout the year?
A. Throughout the grazing season, yes, sir.
Q. Take this Crown country; are you familiar with that?
A. Not so familiar as I am with our own country, that is further west.
Q. Do you feel that you are able to testify accurately as to how far stock would have to go for water in the Crown country?
A. I would not undertake to testify accurately to that; I never measured the distance.
Q. Don't misunderstand me when I use the word "accurately"; I mean a fair degree of accuracy, I don't mean to put it in
356 feet and inches?
A. Yes.
Q. Now how do you feel about that, Mr. Williams, in regard to the Crown country; do you think you know that well enough to testify about the water supply?
A. Yes, sir.
Q. Have you ever had any of your stock in that country outside of the forest?

A. Yes, sir.
Q. Throughout the summer?
A. Yes, sir.
Q. And did they all stay there throughout the summer?
A. Yes, sir.
Q. None of them went into the forest?
A. No, sir.
Q. Sure of that, are you?
A. I am positive of it.
Q. Did you keep them out of the forest?
A. No, sir.
Q. Well, when did they go off from there?
A. They would go to Sopris Creek, West Sopris Creek, and portions of Prince Creek.
Q. Do you mean to testify that all the cattle that are put in the Crown country, every one stays in the Crown country and don't get into the Reserve at all?
A. No, I wouldn't testify to that.
Q. What is the fact about that?
A. I am not familiar enough about that.
Q. Now in regard to the country that is west of Mr. Light's place; you said something about the feed being very good there. What time of the year did you refer to?
A. June, July and August, and the present time.
Q. All th-ough the grazing season?
A. Yes, sir.
Q. It is not over-grazed at all?
A. No, sir.
357 Q. Are you positive of that?
A. I am positive of that.
Q. So that you would be willing to leave your cattle there and let them graze there, and not make use of the forest at all?
A. This year, yes sir.
Q. Why do you pay the Government for the privilege of grazing your stock in the forest?
A. Well, we are sort of law-abiding citizens, for one thing, and we don't want to get into any trouble, and we never knew where the lines of the forest were until over two months ago. I have had various explanations of that, where they were, and I saw them marked out about two months ago on a book, as south of Light's, or west and south of Light's, and it takes in a very—leaves out the best part of our range.
Q. What do you mean by leaves it out?
A. Leaves it in the public domain; leaves the best part of our range in the public domain.
Q. All of the people up there except Mr. Light are permittees, aren't they?
A. Yes, I believe so; I am not positive about it.
Q. And they all object more or less to paying anything?
A. Yes.
Q. And yet you are confident that this range on the public land,

leaving the forest out of account, is perfectly satisfactory, and sufficient for the grazing of all of their cattle?

A. Yes.

Q. You said yourself awhile ago that the necessity of going a mile and a half for water was a bad thing for cattle that were being made beef of?

A. Yes, sir.

Q. How do you account for the fact, Mr. Williams, that
358 the stock that you drove toward the forest, but not into it, kept on going and went up there?

A. They didn't all go up there.

Q. Well, did any of them?

A. Yes, some of them did.

Q. I say how do you account for that fact?

A. Well, it is just the natural tendency of cattle to wander over different territory. If you put them out in an acre of clover they would want to move around, they wouldn't want to stay right in one patch.

Q. You spoke about the impossibility of complying with the provision upon the back of the application, I believe it was, for a permit. Will you please point out what is difficult to comply with in these provisions?

A. I don't believe there is anything difficult to comply with.

Q. What was it that you said would be difficult to comply with?

A. I didn't say there was anything, did I?

Q. Didn't you testify that it would be difficult for cattle men to comply with some regulations or other?

A. Yes, in regard to herding,—riding over the line of the forest reserve and the public domain.

Q. Now just specify a little bit more clearly what you mean, and all that you mean in that connection.

A. In regard to keeping cattle away from a certain line, cattle will naturally go up to certain places, and if you are there to herd them back, you have got to keep driving them back all the time, and they will keep going to that certain place, trying to get over into certain places where they have been used to go freely,
359 and you have got to move them clear out of there.

Q. Well, you are speaking now about the difficulty of keeping cattle off of the forest, aren't you?

A. Yes, in herding them.

Q. Herding them away from the forest?

A. And injurious to the cattle.

Q. Is there any demand that has ever been made on you, or anybody else in any of these regulations that you find unreasonable?

A. No, not when you take out a permit, but in regard to herding that portion there; that is, if we were asked to herd them over there, I believe it is.

Q. But you never have been asked, have you?

A. No, why should we be asked; we have always taken out a permit.

Q. So that your idea about this being unreasonable is that of a man in the standpoint of Mr. Light, for instance, who has not taken out a permit?

A. Yes, if he were asked to keep them off the reserve.

Q. That is all you find unreasonable in the situation, isn't it, in the Regulation?

A. Well, I don't know,—you don't—any person taking out a permit, as I understand it, there, wouldn't have to do any herding?

Q. You say there are no trails near Mr. Light's place, do you?

A. No permanent trails.

Q. (Question read.)

A. There is trails, yes.

Q. Describe them.

A. There is a trail running east and west quarter of a mile to no particular point, to water holes, say. One running north and south——

360 Q. Wait a moment. Where is the water hole?

A. At one end or the other of this trail.

Q. Well, can you give us some idea with reference to the forest reserve?

A. And leading toward the forest reserve. There is no defined trail leading toward the forest reserve from the west side of Mr. Light's.

Q. Does that trail you refer to, start from the north end or southwest corner of Mr. Light's ranch?

A. There is a trail starting from the southwest corner of Mr. Light's ranch leading west about half a mile, and it just stops; then there is another one starting from the same point; it is a portion of an old road,—old wagon road leading maybe a mile south, and runs into one of the ranches—it is an old road; and then there are other trails, small trails, leading most any direction, but there is no well defined trail leading to the forest reserve.

Q. The trail that you refer to as running from the southwest of the ranch connects with other trails, doesn't it?

A. No, sir.

Q. Do you know a place where there is an old road that leads into the reserve?

A. Old road?

Q. Old road.

A. There is a road north or south of Mr. Shuttleworth's, and probably another place,—what is known as the "Hay Park" road leading clear through, from off the public domain on to the reserve, but not from Mr. Light's.

Q. You mean the road itself does not go to Mr. Light's?

A. No, sir.

361 Q. Have you ever seen cattle on that road using it?

A. They use it very little; it is a straight, hard road, cattle don't usually go that way.

Q. How do they get into Hay Park?

A. There is various ways of them going; they can leave from the

west side of Mr. Light's, and go south, and go southwest,—that is, the cattle turned out on Sopris Creek; the cattle from Capital Creek can go due west, or nearly so, to Hay Park.

Redirect examination.

By Mr. WARD:

Q. When do cattle follow trails?

A. Going to water, and in the fall of the year coming from their summer range, and,—well, that is about all they particularly follow trails; they usually feed from the water holes—they scatter, they don't particularly follow trails, but when cattle are coming to water then they follow trails, as a rule, and of course in the fall of the year they follow trails, to a certain extent, leaving the summer range, but not so much as they do going to water, or coming from water.

Q. You made some statement about there being two thousand acres in the range north of Mr. Light. What did you mean by that?

A. North?

Q. Yes.

A. No, I mean it was east of Mr. Light's, clear out of Mr. Light's range. "East of Snow Mass" was the question, the way I understood it, over near the Brush Creek and Wildcat country.

Q. You said in cross-examination that most of the neigh-
362 bors during the past year drove their cattle to within the neighborhood of the forest reserve?

A. Yes, sir.

Q. Mr. Williams, out of one hundred and seventy-five head of cattle turned out north of Mr. Light's ranch early in the month of April, what proportion would you expect to find upon the forest reserve along in the summer time after the range had become good upon the high hills?

A. Well, that depends, Mr. Ward, upon the kind of cattle; that is, in regard to whether they were there the year before or previous years, or whether they had ever been on the range or not.

Q. Take the cattle that had been bought from a different locality,—the Stauffacher cattle.

A. Well, I would say they wouldn't be over twenty-five per cent. would drift toward the forest reserve of that particular bunch that had never been there.

Q. What is the result of a number of head of cattle being driven through the territory where Mr. Light's cattle are?

A. What would be the results?

Q. Yes, as to disturbing Mr. Light's cattle?

A. Why they would probably fall in with the bunch and go on.

Q. What time of the year do cattle put on fat in that locality?

A. Usually from about,—anywhere from the first of September until about the middle of October.

Q. When do they leave, ordinarily, the high range?

A. About the first of October.

363 Q. Where is the grass found that puts on most of the fat?

A. We usually get that,—well——

Q. As to the forest reserve.

A. It would be nearly equal if we could hold the cattle high in the fall of the year. It is usually when the grass begins to dry and harden that the cattle puts on most of the fat.

Q. Do you know whether or not Mr. Light in any way caused his cattle to go upon the forest reserve in 1908?

A. I do not know.

Q. Do you know whether he did so during 1907?

A. I told Mr. Light in the spring of 1907 that I would help him take his cattle up on the range——

Mr. KNAEBEL: Now wait a minute. You are about to testify concerning that same conversation with Mr. Light in which he made some statement to you.

WITNESS: No, sir, he did not.

Mr. KNAEBEL: In any event I object to this question as calling for hearsay, and for transactions which are incompetent, on the ground—to use the expression, in re inter alias acta.

WITNESS: What I was going to answer was nothing leading; only he asked me if I knew of Mr. Light driving any cattle up there——

Mr. KNAEBEL: You have already answered that.

Q. Answer the question.

A. If I knew of him driving cattle up there——

Q. (Question read by stenographer.)

364 A. (Witness continuing:) —and he told me that he didn't have time, or something like that. He didn't say that he would help me or that he wouldn't help me.

Q. Well, did he to your knowledge do anything to—what did he do, to your knowledge, with reference to causing his cattle to go upon the range in 1907?

A. Not any; the cattle dri-ted past our place and on up toward Aspen during 1907, and I telephoned Mr. Light that his cattle were going there, but he didn't apparently seem to want to stop them. It was none of *by* business.

Q. There was an open, unreserved public land, open unfenced land, outside of the forest range in the direction of Aspen?

A. Yes sir.

Recross-examination.

By Mr. KNAEBEL:

Q. Was that the whole five hundred head that went up to Aspen that year.

A. Oh, I wouldn't say how many, but I don't think there were that many; I am almost positive there were not that many, though I wouldn't say, they may have went during the night or day; I don't know whether there were that many.

Q. Did you see them?

A. I seen a good many of them,—three or four different bunches.
Q. How many did you see?
A. I expect I seen twenty-five in a bunch.
Q. That is all?
A. In one bunch, and then there would be a few more straggling along as cattle drift.
Q. How many did you see all told?
A. I didn't count them and I can not say how many I
365 seen. Mr. Light told me that he got over one hundred or one hundred and fifty, and it might have been two hundred and might have been three hundred, or might not have been a hundred that I seen.
Q. You don't know what became of them afterward?
A. After they went past our place, yes; I seen them on the public domain east of Snow Mass, between what is known as "Brush Creek" and Snow Mass, and where Light got them I don't know; whether he got them on the forest reserve or on the public domain I don't know.

(Recess until 1 o'clock P. M.)

MARCUS LAFAYETTE SHIPPIE, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. What is your name?
A. Marcus Lafayette Shippie.
Q. Where do you live?
A. I live about half a mile due north from Emma,—due South, I would have said.
Q. How far is that from Mr. Light's house?
A. It is about four miles.
Q. On what creek do you live?
A. I live on Sopris Creek.
Q. What is your occupation, Mr. Shippie?
A. I am a ranchman and cattle dealer,—cattle man.
Q. How much of a farm have you?
A. One hundred and sixty acres.
Q. What do you raise on your farm?
A. I raise hay, grain and spuds.
Q. And how many cattle have you been running of late years?
A. I have from one hundred to two hundred head.
366 Q. How long have you lived in this vicinity?
A. I have lived here twenty-six years.
Q. How long have you been occupied in your present business on your own account?
A. Twenty-six years I have been in the cattle business and ranching.
Q. How long have you been familiar with the cattle range in the Roaring Fork Valley?

A. Since 1882.

Q. And how long have you made a business of handling cattle in that range?

A. Since 1882.

Q. How far does the range extend from the Williams Brothers' ranch, the range in the vicinity of Mr. Light's ranch; how far does that extend in the direction of Carbondale along the Roaring Fork Valley; how many miles is it?

A. In the direction of Carbondale is Mr. Williams' and Mr. Light's ranch?

Q. Mr. Williams' ranch, yes.

A. I should judge the nearest you could get to it the way the crow flies I would think it is ten miles.

Q. And about how much unenclosed land is there for cattle to run upon, I mean; what width of unenclosed land is there for cattle to run upon in that country?

A. Well, there is now and then a ranch that is located in basins like in there is all. Well, you can go right straight through there. Please ask that question again.

Q. About how wide is that range?

A. Well, that is the width of it, and there is two or three ranches mixed up in there, straight across on the range.

367 Q. How many miles in the range, about,—approximately?

A. About ten miles is the width.

Q. And the length?

A. And the length,—now the length, which way do you mean?

Q. From Mr. Williams' ranch to the Roaring Fork, or Carbondale.

A. I just stated it was about ten miles from Williams' ranch to Carbondale.

Q. Well, now from the Roaring Fork up to the forest reserve about how far or wide is it?

A. As near as I can find out where the forest reserve line is it must be in the neighborhood of five miles, or between four and five miles, as near as I could judge.

Q. How much of that territory is fenced up?

A. Well, there is about half a mile from the Roaring Fork river; yes, it is about three-quarters of a mile.

Q. Is there any unfenced open land southeast of Williams Brothers' ranch?

A. Southeast.

Q. In the direction of Aspen?

A. Oh yes, sir,—yes, sir, lots of it.

Q. Is there any unfenced open, unreserved public land beyond Carbondale to the northwest?

A. Northwest, yes, sir,—lots of it.

Q. Is it customary for the ranchers to fence all of that patented land?

A. Fence all the patented land?

Q. Yes.

A. Well, some of it is, and some it is not; some will fence off

a part of the range and some of the ranchers will just fence off ground that they are cultivating so far.

Q. Have you been over the range from the Williams
368 Brothers' ranch down to the Crown country during the year 1908?

A. Yes, sir, very frequently.

Q. Are you familiar with the condition of that range as it has been this past summer of 1908?

A. Yes, sir.

Q. What is the character of the range as refers to food for cattle during 1908?

A. Plenty of food.

Q. What was the condition, in say,—in May 1908?

A. May 1908, plenty of food; that is early you know; that is their earliest range, that is the first part of their range, though, and there was plenty of food there in May.

Q. Are you familiar with the territory north and northeast of Mr. Light's ranch, bounded on the east by Snow Mass, on the north by Roaring Fork, and on the west by Sopris?

A. Yes, sir, very.

Q. Did you see that portion of the country in the spring of this year?

A. Yes, sir, I seen it several times this year.

Q. During the times you have seen it this year what did you find the condition of the grass?

A. I found abundant grass.

Q. What evidence, if any, of overgrazing did you find?

A. Oh, there is an abundance of grass, there is no overgrazing there.

Q. What evidence, if any, as to overstocking the range?

A. There is no evidence whatever.

Q. How recently have you seen that grass?

A. How recently?

Q. Yes.

A. I saw it not over ten days ago.

Q. What is the condition of the water available from that territory?

369 A. Well, if they get right on the main divide I don't think that you could point a compass any place on that divide that a cow would have to go over a mile, or I don't think—yes, just about a mile.

Q. What, as a stockman, would you say the condition of the range is as to water—that range, as to water?

A. Well, I consider that a cow can very reasonably go a mile to water.

Q. Would you consider it good or bad?

A. I would consider it good, yes, sir; the Roaring Fork on one side, the Roaring Fork on the east, and the Sopris Creek on the west, and when they are on the divide, right direct on the divide there, about half way between,—it is about a mile if they should happen to be right square on the divide.

Q. What effect, if any, would going the distance the cattle must from that particular territory have upon the cattle going for water?

A. Why I don't consider it has very much effect on them; of course it might be a little better if they should happen to be grazing to water, but I don't consider a mile is any distance for a cow to travel to water.

Q. What is the character of feed upon that special range?

A. Very good.

Q. What is the character of it?

A. Mostly blue-stem and bunch grass.

Q. What kind of feed is that considered by the stock men in this country?

A. Well, it is considered the very best.

Q. Is that available throughout the year,—grazing season?

370 A. Yes sir.

Q. What portion of the grazing season is that grass best, if there is any portion?

A. Well, I consider it the best when it matures in the fall; it is really better then; still at any time of the year that a cow can reach blue-stem grass it is all right.

Q. How is the present condition of that especial range compared with it five or six years ago?

A. Oh, it is fully as good.

Q. Are you familiar with the country northwest and west of the range you have just described?

A. Yes, sir.

Q. Are you familiar with the Crown country?

A. Yes, sir.

Q. What is the character of the Crown country in the year 1908 in reference to abundance or lack of feed?

A. Well, it is good grazing there, plenty of feed there; everything is rolling fat, that is, everything that should be fat; there is cows that has been sucking calves all summer is in just as good condition, and everything that should be beef steers and barren cows is good and fat.

Q. What is the condition of that range in regard to whether or not it has been overgrazed or overstocked?

A. No, it has not been overstocked.

Q. The present year?

A. No, sir.

Q. Did you notice that range during the year 1907?

A. Yes, sir, I ride that range every year.

Q. In what condition was the grass during 1907?

A. It was in good shape; it was in good condition.

Q. During what portion of the season, grazing season?

A. It was in all the grazing season; I never seen it very

371 very close in the ground.

Q. What was the condition of the range north and northeast of Mr. Light's during 1907?

A. North and northeast?

Q. The one we have just described along the hills?

A. Why it was in good shape; there is grass there the year

around; that is if a cow could get to it the cow could winter there, but the snow covers it, of course.

Q. How was the grass on that range during 1907 as compared with the present year?

A. About the same,—about the same condition.

Q. And how is it as compared with past years, five or six or seven years ago?

A. I don't consider there has been any material change on that range for the last five or six or seven years.

Q. How is the water in regard to accessibility throughout this range?

A. Now what range is that you mean?

Q. Beginning with the Williams ranch, running down throughout the Crown country?

A. Throughout the Crown?

Q. Yes.

A. Why there is water there in the Crown. There are three springs in the Crown, and there are two lakes, what we call the upper lake and the lower lake; and there is three natural springs there, and there is two of them that I never knew to go dry.

Q. How is that considered by cattle men, as to its being watered, good or bad?

A. Why I consider it very well watered.

Q. The creeks that run through this territory, Sopris Creek and West Sopris, how are their banks as to cattle getting up and down them?

372 A. Why the banks is all right, a cow can go down nearly every place; of course a cow has a particular place, generally, to go, they will have their trail, and maybe they will go a quarter of a mile if they are within twenty feet of water; a bunch of cows will start on the dead run for water and strike a certain trail and go to their certain watering places even if they are within fifty feet of the creek, though they can go into the creek nearly everywhere they want to wander.

Q. Are you familiar with the country west of Mr. Light's place, between that and the forest reserve?

A. West of Mr. Light's place, between Mr. Light's place and the forest?

Q. Yes.

A. Yes, sir.

Q. What is the character of the feed there during the present year?

A. It is very good.

Q. You have seen it the present year?

A. Yes, sir, I seen it about a month ago.

Q. What evidences, if any, are there of its having been overgrazed or overstocked this year?

A. It don't look to me that way.

Q. How about last year?

A. It wasn't overgrazed; it has not been overgrazed there so far as I know for four or five years.

Q. How about water in that territory; is it difficult or otherwise for cattle to get to water?

A. West of Mr. Light's ranch—now let me see—water is all right, they can go down there to the Finley ditch and drink.

Q. Are there any other places beside the Finley ditch where they can get water?

A. I was just thinking if there were. No, I don't think
373 that there is.

Q. Is it a fact that in the early spring of 1908 the grass on the range in the immediate vicinity of Mr. Light's place was all eaten off?

A. 1908?

Q. Yes, sir.

A. In the immediate vicinity?

Q. Within two or three miles.

A. Oh, no sir, that is not a fact.

Q. Is it a fact that it is not now eaten off?

A. No, sir, it is not.

Q. Have you an approximate idea of the number of cattle that have run upon the territory from the Williams ranch to Carbondale during the past season?

A. Now what do you mean? Do you mean cattle that is turned loose, or the cattle that is run on the territory regardless of the reserve and all?

Q. Yes.

A. Well, now, my best estimation would be between twenty-five hundred and three thousand head. Of course that is just a rough estimate.

Q. In your opinion as a cow man does that number of cattle overstock this territory or not?

A. I don't think it does, no, sir.

Mr. KNAEBEL: The question is objected to as not sufficiently defining the territory intended, and the answer is moved to be stricken out.

Q. Do you understand the territory — had reference to?

A. I understand the territory. You mean the territory outside of the reserve, do you not?

Q. Yes, sir.

374 A. Well, I consider that the territory outside of the reserve would amply support that many cattle.

Q. If the forest reserve southwest of Fred Light's ranch were fenced with a lawful fence under Colorado law, how many cattle could be supported in the territory on unreserved land?

A. Do you confine yourself to the southwest of Fred Light's ranch?

Q. No, that is, if the forest reserve was fenced, how many cattle could run from Williams ranch down to Carbondale——

Mr. KNAEBEL: How many cattle could run from Williams ranch down to Carbondale?

Q. Could be supported there during the grazing season?

A. Well, I believe between twenty-five hundred and three thousand head of cattle.

Q. How far will Mr. Light's cattle graze when turned out in April northeast of his ranch, before the season is over?

A. How far will they graze?

Q. Yes.

A. That is an awful hard question to answer; though my cattle sometimes goes ten miles, sometimes fifteen miles. That is an awful hard question to answer.

Q. Is the Crown country inaccessible to Mr. Light's cattle?

A. No, sir, it is not inaccessible to any man's cattle if he turns them loose.

Q. Is the fact that the Crown country is five or six miles away from Mr. Light,—does that fact prevent them from going there?

375 A. No, sir.

Q. May Mr. Light's cattle without damage to themselves, go as far as Prince Creek and Thomas Creek during the grazing season?

A. Yes, lots of them; I have driven herds of them from Prince Creek.

Q. So what would you consider would be the ordinary range of Light's cattle.

Mr. KNAEBEL: Objected to as indefinite, as not defining whether it is intended to call for knowledge of the witness as to where Mr. Light's cattle actually go, or the range that they might go upon, or the range that they are entitled to go upon.

Q. I will modify the question by saying, or adding to that—the ordinary range of Mr. Light's cattle prior to the establishment of the forest reserve?

Mr. KNAEBEL: Same objection to the modified question.

A. An ordinary range prior to the forest reserve is very—I consider from Prince Creek to within three miles of Aspen, I would judge that they would run; there is nothing to hinder them running up there; I know I found my cattle that far, and I am four miles this side of him.

Q. What per cent of the cattle would naturally go upon the forest reserve during the grazing season?

A. Well, from a third to one-half; that is if they was left to go loose unmolested.

Q. What has been the custom of the cattle men under the
376 present regulations of the Forestry Department as to handling their cattle during the *bast* two seasons; those that have permits?

A. As far as I am concerned, and others that I know anything about, why I turn my cattle about three-quarters of a mile above my ranch and fly them to the high winds and let them go which ever way they want to go, and just see that they don't come down and bother me on the range. I get a permit for what cattle—or

more that I consider so as to be dead safe, that will drift on to the forest reserve, and then sometimes I go up *on* June or July, maybe the first of August, and brand up my calves, and see no more of them until I ride for beef. I go around there every little while and ride for beef and veal calves, and the like of that.

Q. Do you know of any of your neighbors or cattle men in the vicinity ever driving the cattle upon the forest reserve?

A. No, sir.

Q. Those that haven't permits?

A. No, sir.

Q. Do you know anything about the custom of putting salt on the forest reserve?

A. Yes, I know about it; I put salt up on the forest reserve for the last twenty-five years; that is not on the reserve exactly, but up on the range where the cattle run.

Q. What is the object of putting salt up there?

A. Why because it makes our cattle do better, and it holds them up there; if you put it up there and keep them there in the fall it holds them up off our ranges and saves our later feed.

Q. Have you had any experience in keeping your cattle up on the high range?

A. Yes, sir, more especially in the fall.

377 Q. What effect would the fact that salt has been placed upon the forest reserve have on tolling Mr. Light's cattle up there?

A. Oh, it would have great effect; the cattle will naturally stay where there is salt, and they will drift where there is salt; if a cow finds salt and another has not found it, as a general thing it will toll another one to it until they all find that chunk of salt and it will hold them up there.

Q. What is the number of cattle that run upon that range, including the forest reserve now, as compared with six or eight years ago?

A. I don't think there is as many quite as there were six or eight years ago.

Q. Do you know any reason why there would be any less cattle?

A. No, I do not; only men have gone out of the cattle business that was there before. I know of one man that used to have fourteen hundred head of cattle there, just one individual man.

Q. Is there any difference in the condition of the grazing feature now than then?

A. Well, I don't know whether there is so very much; I think it is a little better now than it was at that time.

Q. In which, in the water? Is there any change in the water whatever?

A. No, sir.

Q. Do Mr. Light's cattle mix with the other cattle upon this lower range?

A. Yes, sir.

Q. Does the fact that they do mix with them have any tendency to cause them to drift and go upon the forest reserve?

A. Now I don't just exactly understand that question.

378 Q. Does the fact that Mr. Light's cattle mix with herds that have permits to go upon the forest reserve, have any tendency to take his cattle up there?

A. Well, I don't know as they really have; they would go on to the range with other cattle. A cow don't know whether she has got a permit to go on to the range or not. But their cattle, of course would go with the others.

Q. If cattle should be driven, under the direction of the forest department, or otherwise, from these lower ranges up into the higher ranges, would *they* be any tendency of Mr. Light's cattle being driven or taken along with them?

Mr. KNAEBEL: I move to strike out the question and answer to it, upon the ground that they are not founded upon any evidence or contention in the case, and are incompetent and immaterial.

A. Yes, sir.

Q. Why will Mr. Light's cattle leave the lower range as the summer comes on?

A. How is that?

Q. Why will Mr. Light's cattle leave the lower range when the summer comes on; why will they leave it then?

A. Why will they leave it then?

Q. Yes.

A. It is natural for a cow to drift a little higher as the feed gets dry below, and rustle tender feed.

Q. Is the fact that feed is on the lower range maturing on the ground—does that fact make your feed any poorer?

A. Maturing on the ground?

Q. Yes.

A. No, sir.

379 Q. But I understand you to say that the cattle would prefer the fresh grass?

A. A cow might choose something that would not really put on as much fat as something else; they rustle tender feed as the green grass comes up, at the same time the tough grass as it ripens, as they come down, will put on more fat than this fresh grass that is so sloppy.

Q. Would the fact that an animal leaves a certain territory—is that any proof that there is no feed there?

A. No, sir, no, sir.

Q. Do you know anything about Mr. Light's habit of turning his cattle out in the early spring.

A. Well, no, I never was there, I don't think, in my life when he turned them out.

Q. Have you noticed his cattle in the early spring?

A. Yes, sir. I have noticed them. I didn't notice them last year, 1908, but 1907 I noticed he had turned them all out on to this northeast hill.

Q. About what time was that?

A. Well, it was very early; it was in right good season he turned

them out there, and I saw some of them up there and I asked him why he turned them up there and he said it was because the snow had gone off and there was better feed there than any place else, and he said that he would turn them up there and let them go where they was a mind to.

Q. What is the habit in this range country of cattle men, in handling their cattle?

A. What is the habit?

Q. Yes, do they turn them out, or do they herd them?

A. They turn them out in the spring just as soon as the grass gets in shape so that a cow can exist, and let them go; he
380 rides among them now and then a little while and goes out and rustles calves, veal calves and beef whenever he looks after them awhile.

Q. What would be the effect upon the cattle business were the cattle men required to herd their cattle in this territory.

Mr. KNAEBEL: Objected to as incompetent, irrelevant and immaterial.

A. It would drive them out of the cattle business.

Mr. KNAEBEL: I move to have the answer stricken out.

Q. It was testified, Mr. Shippie, that you refused to put the salt where the rangers directed you?

A. It was?

Q. Yes, is that true?

A. I believe it was.

Q. Why?

A. Because the rangers directed me to put salt where there was none of my cattle; my cattle was down in another direction and I put the salt where my cattle was.

Q. Where did you put your salt?

A. Right up at the—what we call the "Dry Lakes" about three quarters of a mile due north from what we call the "Nutting cabin".

Q. What effect, if any, had the conduct of Mr. Light upon your action in this matter?

A. None whatever.

Q. Have you taken out a permit?

A. Yes, sir.

Q. Why?

A. I took out a permit because I was a law-abiding citizen and I just wanted to keep out of trouble, if there was any show for trouble.

Q. Do you consider that you got any returns for the permit you took out?

A. Nothing whatever so far.

381 Q. What is generally considered by the cattle men of your locality as Fred Light's range?

A. As Fred Light's range?

Q. Yes.

A. Now I don't understand the meaning of that question.

Q. Where do Fred Light's cattle run?
A. Mr. Fred Light's cattle runs from Prince Creek to Aspen.

Cross-examination.

By Mr. KNAEBEL:

Q. Mr. Shippie, what do you mean by Mr. Light's cattle running from Prince Creek to Aspen?

A. I mean to say, sir, that when he turns his cattle out in the spring, and when he gathers them up in the fall, they are found all the way from Prince Creek to Aspen, when he gathers them in the fall; that is what I mean to say.

Q. And that none are found on the forest reserve?

A. Oh no, sir, I don't mean to say that, I don't mean to say that; I mean to say that that is the territory they take in, from Prince Creek to Aspen, and of course that might take in some of the forest reserve, and that was the range where his cattle is.

Q. You don't mean that a great many of his cattle go to Aspen or near there?

A. Why no, I don't mean to say that a very great many of them go to Aspen; there has been some found in Aspen and some of them——

Q. Just a few have straggled there?

A. Yes, sir, I didn't mean to say a body of his cattle goes to Aspen; there is a great many goes to Prince Creek and in the Crown country.

Q. Were any of your cattle on the reserve this summer?

A. Yes sir.

382 Q. How many head had you this summer?

A. Have I?

Q. This last summer.

A. Two hundred head; somewheres about two hundred head.

Q. Were those cattle all new to the country?

A. No, sir, there were about one hundred head of them new.

Q. You brought in one hundred head of new cattle?

A. Yes, sir.

Q. Where from?

A. I brought them in from Denver; they were shipped here from Texas.

Q. Do you not think the cattle would all be better off if they didn't any of them go within the forest reserve?

A. No, sir, I don't say that they would be better off, no, no; of course that would confine them to a little closer quarters than they are now, that would confine them in closer quarters than they are now, that part of them in the reserve. I don't consider they would be better off.

Q. You don't think you and your neighbors would be benefited if they should fence in this forest reserve and not give any permits for grazing inside of the fences, and cut out all of that range that you have used more or less for so many years?

A. Well, as far as I am concerned I would just as soon they would; if they would fence it so as to give me no trouble I would just as

soon they would fence it; of course if they would force me for to ride the land and keep my cattle off there, that would drive me out of the business. I couldn't do that, or be sued for fraud, but if they would fence that off and save me the trouble of paying
383 for it and that monkey business, I would just as soon they would.

Q. You think that that would be generally to the benefit of the community up there, that there should be no grazing, that a fence should be erected, and there should be no grazing within the forest limits?

A. I can not say as it would be a benefit, although I can not say as it would be a detriment.

Q. Now is there a surplus of feed throughout the grazing season upon this range about Mr. Light's place?

A. A surplus?

Q. Yes, not including, mind you, any of the forest reserve.

A. Well, yes, I consider that there is about two miles by four or five, that there is a surplus of feed; there is lots of feed, that is, northeast of Fred Light's fields,—ranch,—two miles by four.

Q. You think that aff of the cattle you have testified about—twenty-five hundred to three thousand head, could be grazed throughout the grazing season on that range that you have referred to?

A. Not on that range, no, sir, no, sir, beg pardon, but the whole range that is outside of the forest reserve, now, mind you, outside of the forest reserve, takes in an immense territory of this Crown range, and of the range this side of, east of Crystal river up above Fate Girdner's.

Q. You couldn't use that range, though, for the whole season——

A. Why certainly we——

Q. One moment, I had not finished,—without herding the cattle unless the reservation was fenced?

384 A. No, sir, because we could not keep our cattle from straying on to the reserve.

Q. Your cattle like the tender grass?

A. Cattle like the tender grass, that is very true and even if that grass wasn't tender they would stray there anyhow.

Q. What do you now think, Mr. Shippie, is the effect upon the movements of cattle, the fact that the grass is more tender on the reserve than down below, as the season advances?

A. It is natural for cattle for to drift up as the grass gets greener; and as the grass gets ripe below, and the grass grows green above, there is as much animal disposition about a cow as there is a deer,—they will follow the snow; notwithstanding it might not be so good for them they will go up naturally, to a certain extent.

Q. Well, then do you think that the use of the forest region, the high country there, by the cattle,—is it a positive injury to the cattle industry?

A. No, sir, not unless they go up there and get some of that poison weed; lots of them go up *up* and gets some poisen weed and it kills lots of them.

Q. But, you don't think it does them good?

A. Yes, certainly I do; I think it does them good to get up there, and they shed quick, they get on some meat, and they leave our lower country, and they put on a good deal of beef up there, and come back down in the lower country, and we have lots of grass and it ripens up the beef and we have fine beef. If you kill a cow and take the beef right off in the upper country you will
385 not get nearly as nice beef as you have off of grass that is ripened, and the ripened grass ripens the beef; a beef cow has to be ripened the same as an apple.

Q. What are the water conditions up on the reservation?

A. Fine.

Q. They don't have to move far for water up there, do they?

A. No, sir, that is, in parts of it.

Q. Where they can go, they can go and get water next to their feed, can't they?

A. You bet they can go any place there and fill themselves, and lay down right there, and drink water; and they can off of the reservation, too.

Q. Well, when they do that off the reservation they have to go further to get something to eat after they have taken a drink?

A. Not in all directions they don't.

Q. Take this region we have been talking about lying generally to the northeast of Mr. Light's place.

A. Well, they would naturally have to go all the way from twenty feet to a mile for water there,—the furthest part I don't think that you could stick a stake that they would have to go over a mile in that country right on the divide.

Q. On the average, about what time of the year do you turn them out, you and your neighbors, including Mr. Light?

A. We turn out in the spring of the year; it varies all the way from the middle of April up to the 20th of May,—sometimes we go as late as the 20th of May.

Q. You feed as late as that, do you not?

A. Yes, sir, sometimes we do, not frequently though. The
386 1st of May—we usually have our cattle out on the range by the 1st of May.

Q. What do you wait so long for, is it because the snow covers the ground?

A. The snow is on the ground and the grass has not started.

Q. Does much of that grass that has been cured in the fall on the range remain over the winter so that it is useful in the spring?

A. Very useful if it is there and hasn't been eaten.

Q. You are begging the question now. I said, does much of it remain over the winter?

A. Oh, well no, not so very much; some of it does.

Q. But really you have to rely—as I understand the testimony you have to rely on the grass that shoots up?

A. No, sir, I turn my cattle out very often before I can see a sprout of green grass.

Q. Well, take it generally; I am not talking about the exceptional cases now, but the general proposition is that the spring grazing is on the new grass, isn't it?

A. I scarcely ever wait until there is new grass comes up for my cattle until I turn out.

Q. What do you do; leave your fences open?

A. Open the fences and drive the cattle on to the range.

Q. What about the general custom?

A. That is the general custom in my neighborhood.

Q. I want to call your attention to your previous testimony?

A. Yes, sir.

387 Q. Would the people up there turn out their cattle as soon as the grass sprouts up in the spring?

A. Well, it sprouts up a little and comes out on some old grass just a little, it doesn't matter if it isn't up high enough for them to live on it; there is some old grass for them to live on.

Q. How long do they remain there usually in the spring after you turn them out in the lower country before the grass begins to get in the condition which you say is cured grass, which is better for cattle, but not so much to their taste?

A. Well, sir, they gradually leave the country that we turn them on maybe, say, a part of them in a week or ten days and part of them will stay on maybe for three months; but they gradually drift up, as the summer and spring opens up, and the summer comes around they drift up to higher country.

Q. The heat gets pretty intense down below there, doesn't it?

A. No, sir, not so very hot.

Q. Doesn't the ground dry up a great deal?

A. Oh yes, the ground gets pretty dry.

Q. You couldn't raise crops on it to any extent without irrigation, could you?

A. No, sir.

Q. And then they would have to go also a considerable distance for water away from the kind of grass that they like best, if they stay down below?

A. No, there is no place there, understand me, that they have to go any distance for water on our range—there is no place, I don't know—from eight or ten miles one way and twenty miles

388 the other—no not twenty miles, we will moderate that down to twelve, where it would be one mile from our ranches; I don't know where I could get in the vicinity of our cattle ranches that——

Q. Now just bear in mind what I am getting at is not what a cow could do without injuring itself, but what a cow would do without being compelled to do. Now would a cow willingly go that far for water, a mile, if it could find water nearer?

A. No, sir, not if they knew where it was I don't think.

Q. Do you know of instances, Mr. Shippie, where cattle have been turned out on the northeast of Mr. Light's place and gone over that ridge that lies to the east into the Roaring Fork and watered there?

A. No, sir, I can not cite no instance.

Q. Well, how does it come that that does not occur?

A. How does it come that that does not occur?

Q. Yes, how does it come that that does not occur?

A. I don't know but it does occur.

Q. Well, isn't it a fact, Mr. Shippie, that that becomes a pretty high ridge in there, and is steep on the east side?

A. It is steep, but it is very accessible.

Q. And isn't it a fact that the Roaring Fork is fenced on the other side of that ridge?

A. Yes that is a fact, and it is a fact also that there is a Four Mile ditch runs along there all summer, right above the fence.

Q. And it is always full?

A. Flows plenty of water for cows,—a bunch of them.

389 Q. You don't mean to say it is a flowing ditch all through the summer?

A. I do mean that it is a flowing ditch all the summer.

Q. Sufficient to water stock?

A. Sufficient to water one hundred and sixty acres of ground.

Q. Always flowing?

A. I don't know whenever it has been shut off unless it was broken. I used to be interested in that ditch myself.

Q. Are you very familiar with the Crown country?

A. Yes, sir, very; I have rode it practically twenty-five years—killed lots of game in there.

Q. Been there all times of the year?

A. Yes, sir, all times of the year,—no sir, I will take that back, in the dead of winter I hardly ever go there because the snow gets so deep you can not get in.

Q. Describe the two lakes you spoke of.

A. Those lakes is formed by springs: there is one lake has been dammed up, but the dam is broken out, and there is a ditch that the water from the spring has been running through, so I don't think it is blocked up and the other there is a sag in, a regular lake, a natural lake flowing all winter.

Q. How much water is in that, how deep all the season through?

A. I couldn't exactly say how deep it is; there usually is about, oh, I should judge, a foot deep anyhow. Never was out in the middle of the water; the water is generally riled up by the cattle, you can hardly ever get there; it is a great place for cattle to lounge around; if you have got any cattle in the range the two lakes

390 is the places you will strike for first, because there is lots of cattle lounges around there.

Q. Is that where you go for your stock if you want them?

A. That is where I go for my stock if I want them. If you have an idea that your cattle is in that part of the range, in the Crown, I generally strike out for the lakes first, and then if they are not there I go out on the hills.

Q. Do most of the cattle that go to the Crown country stay around that lake all summer?

A. Usually they come there and drink; there is no other spring for about half a mile further west; but they come there usually to drink.

Q. You are positive, are you, that that is good water all the year around?

A. I am positive there is a good spring there, good enough for you or I to drink all the year around through the summer time.

Q. Well, they may not drink. How about the other lake?

A. Well, they are both springs,—come from springs.

Q. Do all the cattle drink out of the other lake?

A. They drink wherever they please; they lounge from one lake to the other and come there to drink.

Q. Who owns those lakes?

A. They are not owned by any one; the United States Government owns them.

Q. Isn't one of those lakes in private ownership?

A. Not that I ever knew of.

Q. Did you ever hear of one being fenced in?

A. It was fenced in at one time, but it was given up; that was years ago. There is no fence there now.

391 Q. You spoke about the Finley ditch. Where does it run?

A. That is taken out about a mile I think above his ranch, out through the range and comes out on to some of his high ground. I can not say that is the name of the ditch, but he owns part of the ditch, or believe- he does; I don't know but Light is part owner of the ditch.

Q. In reference to Mr. Light's west line where is the ditch?

A. West line? Why I should judge that ditch was about a quarter of a mile east; I think it runs through his land there about a quarter of a mile east. Now that is my judgment. I never looked at it closely all the ways like.

Q. Do you know that line of fences that runs up there, extending southwesterly from Mr. Light's place?

A. Yes, sir, up on the hill there, you mean.

Q. Well, they run along up East Sopris Creek?

A. Yes, sir.

Q. You know those?

A. Yes, sir.

Q. Now where is the ditch with reference to those fences?

A. Why there is a fence—if I understand you right, there is a fence that he has, a pasture fence in on the west way up on the side hill here.

Q. Now, Mr. Shippy, I show you a map called "Exhibit A" which is attached to the answer of Mr. Light in this case.

A. Yes.

Q. It shows the location of his ranch, of East Sopris Creek, of the forest reserve, and of a line of fences extending southwesterly from Mr. Light's place, to a point in Section 13, township,

392 9 south, Range 87.

A. Extending southwesterly?

Q. Wait a moment. To a point at or near East Sopris Creek. Now do you know that line of fences?

A. Where is East Sopris Creek? Is this Sopris Creek; is this north of Sopris Creek; is this north?

Q. That is north (indicating on map).

A. This is east (pointing)—this is west. I am kind of turned

around with that map, I don't just exactly understand it; I don't understand that map.

Q. If this is the north where the top of the map is, and this is the south where the bottom of the map is, and if this is the west where the forest reserve is found, and if near the center of the map is Mr. Light's ranch, and the east is right, and the west being on the left, I am now asking the question whether you remember a line of fences stretching southwesterly through the forest reserve up East Sopris Creek from Mr. Light's ranch?

A. Yes, sir I do.

Q. Does the line of fences that you recall extend substantially as marked upon this Exhibit A?

A. I could not say.

Q. Where is the Finley Ditch, approximately, with reference to township and section, as marked on this map, and with reference to the fences.

A. You haven't got Finley's ranch on here, have you?

Q. No, sir.

A. This is east and west.

Q. Is it inside or outside of the fence?

A. Why I think that it is all outside, although some of it
393 might come inside as the fence comes in there. What do you mean, along Mr. Light's fence.

Q. The fence that I have called your attention to.

A. Mr. Light's fence don't have anything to do with it; the cattle waters up west of there if that is what you are trying to get at; I don't know as that ditch comes down that far as to *to* come in to Mr. Light's ranch; I couldn't swear that it does.

Q. I am talking about the fence that I have pointed out to you, extending through the forest reserve up toward the creek, and I would like to have you state, if you can, where that ditch is with reference to that fence?

A. I couldn't say as that ditch reaches that far as his fence; it is Finley's ditch, and I can not say as it comes down into Mr. Light's land at all.

Q. Have you observed that ditch all the year around?

A. All the year around, no, sir.

Q. Well, leave out the winter.

A. I have observed that ditch now and on different times in the summer time as I would be riding through that country.

Q. Are you able to state that that ditch would furnish a sufficient supply of water for numerous cattle all through the grazing season?

A. Yes, sir.

Q. And that the water in it is such in quantity, and so continuous in flow that it could be relied on?

A. Well, now, it is such in quantity, although Mr. Finley
394 might shut that ditch down so that the cattle could not drin*g* there. I can not say that was continuous in flow.

Q. Which side of the fence is that ditch on?

A. It is on the north side. The ditch goes away in the field, and other places it comes around, and I don't know but that the

ditch wavers inside of the fence. Of course a ditch can't go straight through on a piece of ground.

Q. If Mr. Light turned out his cattle northeast on the vacant public domain northeast of his ranch, in what direction would they naturally drift?

A. Well, they would naturally drift every direction as far as that is concerned; they would be more apt to drift, of course, to the west if they drifted at all. They might live there all summer and stay there.

Q. Do you think that that has been their custom?

A. Well, yes, it is the custom, lots of them does live there.

Q. You think lots of Mr. Light's cattle have lived there all through the summer, do you?

A. No, I wouldn't say that.

Q. You know, as a matter of fact, that they have gone on the forest reserve?

A. Yes, sir, because I have seen them there,—yes sir.

Q. Does that have any effect upon your opinion that they would naturally, just as naturally remain near his ranch as drift upon the forest reserve?

A. Just as naturally drift any place; there has been a bunch of cattle down south,—there has been forty or fifty head of his cattle nearly all summer right,—I think it is pretty near due north of his ranch, and it has watered there right on West Sopris Creek
395 all summer, right up in them foot hills. They don't know what a forest reserve is.

Q. Would they just as naturally drift toward Aspen as toward the forest?

A. No, sir, they—this bunch of cattle would naturally drift the way they did, but they drifted that way towards the reserve; they were maybe some of them bought from Stauffacher drifted and found good feed in there and they just naturally stayed in there; I saw them several times in riding after beef and veal cattle this summer.

Q. What do you think they would have done if they hadn't had their old home there?

A. If their old home hadn't been in that direction, do you mean?

Q. Yes.

A. Well, if they had been in the habit of running on the reserve,—if they had been his old cattle, they would naturally drift to the reserve, or in that vicinity.

Q. They would certainly have gone on the reserve, wouldn't they?

A. Some of them would; I think that some of those same cattle if they had been in the habit of going on the reserve they would have done that, because a cow likes to go home, and their home is the range where they are used to running on, and they will go sometimes twenty-five miles to go to their old range.

Q. One more question about this range that you have testified about, which you said was ten miles long, and I forget how wide. What was that range?

A. That was from Williams', or from the upper country,
396 or from where Fred Light's cattle would naturally drift.
Well I should judge it was northwest,—northeast—no southeast and northwest from Prince Creek or Crystal river at the further extent, and of where I would think Fred Light's cattle would naturally drift to, about ten or twelve—it is possibly fifteen miles they would naturally drift to in that direction, the way the crow flies.

Q. Do you mean toward the Crown country?

A. Yes, the line would cross over the Crown country.

Q. Did you ever hear of any one driving his cattle into the Crown country?

A. Did I ever hear of anybody driving his cattle into the Crown country?

Q. Yes.

A. I can cite you to three ranchmen that drive them in there every spring.

Q. Who are those?

A. Robert Dwire, Mr. U. M. Trout—this is now in the house—Peter Gloeshcer and Fred Gloeshcer—two brothers; that is all that I know of that I can cite you to now.

Q. Where do they live with reference to Mr. Light's home?

A. Oh they live about seven miles from there, I should judge, just approximately,—it would be close to seven miles I should think.

Q. In what direction?

A. Well, it is northwesterly.

Q. As between that and the Crown country?

A. Yes, they live right below the Crown country,—right north. Now Mr. Dwire owns about one hundred and twenty-five to one hundred and fifty head of cattle; Mr. Trout had about seventy-five, and the two Gloeshcers one hundred and fifty; they all drove
397 them into the Crown this spring. Now I know that to be a fact because I know they do it every year.

Redirect examination.

By Mr. WARD:

Q. I neglected to ask you, Mr. Shippie—on what portions of the forest reserve is the best grass found, in relation to the timber?

A. In the lower country, the lower part.

Q. What is the character of the timber where the best grass is found?

A. Well, there is no timber excepting some scrub oak,—bunches around.

Q. Does the grazing of cattle upon that portion of the reserve hurt the timber?

A. Not in my judgment; of course I am not an expert.

Q. On the higher ranges where is the grass found?

A. In parks where there is no timber.

Q. Does the grazing by cattle in those parks hurt the timber?

A. No, sir, not that ever I found out.

WILLIAM P. FINLEY, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. Mr. Finley, where do you live?
A. Adjoining Mr. Light's ranch in Pitkin County.
Q. In which direction?
A. The south.
Q. How long have you lived there, Mr. Finley?
398 A. I have lived on the ranch six years past spring.
Q. What have you been doing on that ranch?
A. Farming; also running some cattle on the public range for the last four years.
Q. How many cattle do you run?
A. At the time I turned out in the spring, one hundred and twenty-four cattle were enough to take permit for; I also kept ten or twelve in on the home range pasture.
Q. How much land have you there?
A. A quarter section. One hundred and fifty-five acres and a fraction.
Q. What improvements?
A. A house,—log house, log barn, shed, corrals and so on—pastures.
Q. Now have you been over the range north of Mr. Light's ranch this year?
A. Over a small portion of it; I have not been over it all.
Q. Have you been over the range west of Mr. Light's ranch this year?
A. I have.
Q. Were you familiar with this range north and west of Mr. Light's ranch during the year 1907?
A. Yes, sir.
Q. Are you familiar with the Crown country?
A. No, sir, I am not; I have ridden through it and gathered cattle on the Prince Creek slip a little, but can't say that I am very familiar with the Crown country.
Q. Have you examined the condition of the grass upon the range in the neighborhood of Mr. Light's ranch outside of the forest reserve this year?
A. No, only as I have observed it in riding over looking for stock.
399 Q. What is the condition as to grass or food?
A. I would like to add a little further to that last answer if your will allow me to.
Q. Yes.
A. I did day before yesterday ride over it and examined it, some parts of it here I rode over; I forgot that.
Q. What has been the condition during the year 1908 as to the food upon that range?
A. Why, just an ordinary average year, I think, plenty of feed, as we always have.

Q. What is the character of the food; what kind of grass?

A. Mostly blue-stem, some bunch *frass* and some grass that I don't know any name for.

Q. What is the value of blue-stem for fattening cattle?

A. It is considered the best grass we have on the range.

Q. What is the character of that range as to water?

A. Well watered.

Q. What is the character of the water on the range west of Light's between Light and the forest reserve?

A. The first watering place is my ditch, and then there are springs in what is locally known as the "Williams gulch," and on the other side there are springs on the divide with slips in toward the Nutting cabin; there are springs there where cattle can drink at any time during the grazing season.

Q. And further up Sopris Creek?

A. Further up Sopris Creek they can get to the creek; and also below Mr. Light's ranch it can get to Sopris Creek, and about two miles and a half above my ranch they can get to Sopris Creek again, and then there is one ranch fenced I suppose half a mile—but I am not certain of that—not over three-quarters I think maybe over a half, they can get to the creek again for over a mile, and then there is another ranch and then we strike the line of the reserve.

Q. What evidence, if any, is there on the territory north of Mr. Light as to over-grazing this year?

A. None at all that I know of.

Q. Have you looked at it?

A. Yes, sir.

Q. What evidence is there this year, or has there been this year, as to over-stocking that territory by cattle?

A. None at all.

Q. You are familiar with the fences upon Mr. Light's place adjoining you?

A. I think so, as much as one neighbor would be with another man's fences.

Q. He has what is called a "meadow pasture"?

A. Yes, sir.

Q. And do the fences run around that pasture?

A. To the west is a fence, and also it comes to a point a few yards below my line, and from there runs on the southeast along the lane to what we call the "Emma road," running down Sopris Creek, and from there, there is a road fence runs almost north and south,—northwest and southeast, I suppose.

Q. Is there any fence west of this western meadow fence?

A. Yes, sir, there is a pasture fence.

Q. How far from this meadow enclosure is that pasture fence, approximately?

A. About a quarter of a mile, I should think.

Q. And that runs north and south; and where does it join your place?

A. At the corner of the fence where my fence and his come together.

Q. And what is there in the way of an opening?

401 A. There is a pair of bars there on his side opening into his pasture from the public range.

Q. What is the character of the fence, that inside fence which runs north and south directly east of—that is on the east side of the pasture, the meadow fence,—what is the character of that fence?

A. It has cedar posts about fourteen feet apart, I should judge; they are barbed wires and a pole on top.

Q. Are there any gates or openings along that fence on the west side?

A. I don't know whether there are any gates; I know that Mr. Light has had the fence down at times to haul wood off there in the winter.

Q. Which fence do you mean, the meadow fence?

A. The outside fence; but it has been put up; whether the fence was simply let down and driven over, or whether there is a wire gate or bars in there I don't know.

Q. But that inside fence separates the meadow pasture from the western pasture there completely, does it?

A. It does.

Q. The people that pass east and west—what use do they make of the lane, that lane you have just mentioned?

A. That is the way—we have no county road up where my ranch is, and the range—we go up that lane that I spoke of as the Emma road, we go there through a lane to a gate, and through my ranch,—from the end of this land through my ranch, then through Mr. Shuttleworth's and Mr. Dougherty's and on,—we can go on the road to the forest reserve.

402 Q. Does that road you have just described lead through those bars?

A. No, sir, we can turn off before we come into my place and go across Sopris Creek and up the hill and through those bars on to the public range through Mr. Light's pasture.

Q. Is that road used much by people passing backwards and forwards?

A. It is, in certain times of the year.

Q. What effect does that have, whether those bars are up or down?

A. A great deal; we have a great deal of trouble there in keeping our bars and gates closed at any time of the year, and more especially so in the winter and spring.

Q. What does Mr. Light use that western pasture for?

A. Milch cows and saddle horses and mares that he wishes to keep in during the season.

Q. Have you ever noticed any gaps on the extreme western fence north of the bars?

A. Yes, sir.

Q. What are those gaps placed there, made for?

A. For Mr. Light to haul wood off of the public domain,—fire wood.

Q. How far would he have to go for it?

A. Oh possibly half a mile back of this extreme western fence.

Q. It is not on the forest reserve, though?

A. Oh no.

Q. Do you know whether he hauled wood there this spring, along about May?

A. I don't know; I know that his hired man hauled wood off of there on a sled, but later than that I cannot say.

Q. Through the gaps and through the bars there is a well
403 defined road, isn't there, skid road,—wagon road?

A. There is through the bars, I think; there wouldn't be very much of a road through the gaps that you spoke of being down.

Q. How far does that road continue to be well defined and marked through the bars?

A. Above the bars?

Q. Yes.

A. Oh possibly half a mile.

Q. Then what becomes of it?

A. Well, it is grown up with grass at this season of the year.

Q. Are there any trails in that portion of the territory?

A. Yes, sir.

Q. Are they well defined, or otherwise?

A. You can strike a trail that is well defined and follow it for a distance and you will lose it. The cattle have made this trail and spread out and crossed all over the range, and the trail is gone. You can go a short distance again, or a reasonable distance, and pick up another trail maybe running in the same direction and maybe at right angles.

Q. Have you traveled over that territory in reference to finding a well defined trail leading from those bars into the forest reserve?

A. Yes, sir.

Q. Did you find it?

A. I did not.

Q. What kind of grass did you see upon the range north and northwest of Mr. Light's when you made the examination mentioned?

A. Blue-stem and bunch grass, and there is another kind
404 of grass that grows in the jack oak I have never heard any name for.

Q. Were there any cattle tracks around?

A. Yes, sir, the ground is covered with them.

Q. Any evidence of any over-grazing?

A. No, sir, I didn't see any.

Q. Have you taken out a permit, Mr. Finley?

A. I have.

Q. Why did you take out a permit?

A. Because it was cheaper than to defend a lawsuit against the

Forestry Department of the United States Government is the only reason that I can give.

Mr. KNAEBEL: I move the last question and answer be stricken out as incompetent and improper.

Cross-examination.

By Mr. KNAEBEL:

Q. What time do the cattle usually begin to come down from the forest reserve that have been up there, Mr. Finley?

A. Well about when they first begin to come away is during the cold rains in the fall; some come earlier than others,—depends something upon the weather, but in September generally.

Q. Are you familiar with the number of cattle that have been grazing through the grazing season upon the range northeast of Mr. Light's, and north?

A. Well, as I said in the direct testimony, I have only been on a small portion of that range this year.

Q. You don't know how many cattle have grazed on the public domain in that locality, then?

A. On this north and northeast range?

Q. Yes.

A. I don't know the exact numbers, no, sir.

405 Q. Roughly speaking, how many were there?

A. I told you that I had only been on a small portion of that range; I have seen cattle all summer in there browsing up this Sopris Creek that leads to Emma, and you can seldom pass by but what you see cattle on one side, and generally on both sides.

Q. North of Mr. Light's?

A. Yes, the upper end of that range runs up north of Mr. Light's and on over to the Williams ranch and down to Capital Creek, lower Capital Creek.

Q. What I am getting at is, would you know about the number of cattle that graze there through the summer? If you do know, so that you can give any idea of it let us have an estimate; if you don't know, just say so.

A. I don't know so that I can make an estimate; I have seen cattle there, but I couldn't make an estimate on the number because I haven't been over enough of the territory.

Q. You judge there has been cattle there all summer because when you have been north of Mr. Light's you have seen a scattering of a few bunches here and there?

A. Yes, sir.

Q. How many would you see at a time?

A. Well, from two to twelve or fifteen in a bunch.

Q. How many bunches?

A. Three or four perhaps, sometimes only one.

Q. As a matter of fact a great many cattle were there in the spring, weren't there?

A. Yes, sir, every spring.

Q. If all the cattle that were turned out there to grass in the

spring had grass there all through the summer, do you
406 think the grass would be as you found it yesterday?

A. You mean all the cattle that were turned in northeast of Mr. Light's?

Q. Yes.

A. I do.

Q. You think it would not hurt the grass any?

A. I think there wasn't enough cattle turned in that immediate district, what we know as the "Fred Light hill" and running from there on the right hand side of East Sopris and Sopris down to Emma.

Q. So you recognize that as Mr. Light's range, do you, in that locality?

A. No, sir, we don't recognize any range as belonging especially to any man; we all share and share alike.

Q. How many cattle were turned in there in the spring?

A. None that I know of except Mr. Light's in this immediate locality north of his ranch, north and east, and to the right hand of East Sopris.

Q. Do you know where Mr. White turned his cattle out?

A. I know that he turned part of them back of my ranch, taking them through Mr. Light's pasture and through those bars that I told you of, in the first direct examination, and dropped them in back of my ranch.

Q. What do you mean, to the west?

A. To the west of my ranch and southwest of Mr. Light's ranch, but I don't think—I think he took part of his bunch up Capital Creek, but I am not sure as to that.

Q. You have been up on the reserve a good many times, haven't you?

A. Yes, sir, frequently.

Q. Have you ever attempted to find and follow a trail all the way up?

A. Yes, sir, I have.

Q. How well defined are these trails where you do find them?

407 A. In places they are very well defined; in other places they are very dim, and in places you will find no trail at all.

Q. Have you any idea of how many cattle have been on the reserve this summer?

A. Do you mean to ask me simply on the reserve, or on the reserve and in the public domain also?

Q. I mean in that upper country there that is put down on this map attached to the defendant's answer, as the forest reserve.

A. Do you mean simply the cattle that would be on the forest reserve; do you want me to make an estimate of that?

Q. Yes, make an estimate.

A. It is a hard thing to do,—perhaps a thousand head.

Q. Are those cattle all out of there now?

A. Well, I have not been there since the snow, but to the best of my judgment they are nearly all out,—not all of them, there are

always a few small bunches of cattle get located in some warm, sunny place where there is good grazing and stay there until we go after them, but that is very few.

Q. You know that part of the reserve called "Hay Park"?

A. Yes, sir.

Q. Is there no road or trail leading up to that?

A. Not from my ranch nor Mr. Light's ranch, without going through this road through my ranch, and the upper ranches above me.

Q. If you go up the line of fence that extends up Sopris Creek, as marked on this map of defendant's attached to his answer where do you strike the road, in what section?

408 A. I could not tell you.

Q. You do strike the road, don't you?

A. The road leading to Hay Park?

Q. Yes.

A. Yes, sir, we strike the road in about three miles, or about three and a half, above these bars that they spoke of, of Mr. Light's at the corner of my fence.

Q. Isn't there any mark of a cattle trail along that fence at all?

A. There is part way.

Q. As a matter of fact isn't there all the way to the road?

A. No, sir, there is not.

Redirect examination.

By Mr. WARD:

Q. Mr. Finley, I hand you defendant's Exhibit E, a photograph?

A. Yes, sir.

Q. Do you recognize that letter?

A. I think I do.

Q. What is that generally known around that neighborhood, as what?

A. As the Fred Light hill.

Q. Do you know where Mr. Light turned his cattle out in the spring of 1907?

A. To the best of my judgment he turned them out on that hill we have seen the picture of, known as "Fred Light hill".

Q. Upon what do you base your judgment.

A. Upon the fact that I saw the gate open there leading on to that hill from his inner pasture that you spoke of, and the fact that I saw a deep, well defined trail, when the ground was soft, leading out of his field on to this hill—on to the road, rather,—and

409 from there down past his pasture fence that lies across the road, and from there to the right into the hill, and the cattle traveling back and forth on this road, and in to the range over the bank of the road, and a great many rocks down there make it almost impassable at times.

Q. Did you see any cattle at those times?

A. Yes, sir, I have ridden past down that road at all times of the year since I have been there, and to the best of my recollection I have seen cattle.

Q. In 1907 did you see any of Mr. Light's cattle, in the early spring?

A. Yes, sir, I am quite sure I did.

Q. Upon which territory?

A. Upon this Fred Light hill, as we call it, to the right hand of the road.

Q. Do you know anything about where Mr. Light turned his cattle out in the spring of 1908?

A. Not positively, but I know that this gate,—same gate that I told you of, was down and I saw cattle there, and saw them passing back and forth.

Q. Whose cattle were they?

A. Mr. Light's.

Recross-examination.

By Mr. KNAEBEL:

Q. Where did you say that gate was?

A. This one led out on to Fred Light hill that I spoke of.

Q. On the northeast of Mr. Light's place?

A. Yes, sir, it is on the northeast, opening from the meadow on the northeast side leading on to the county road, and when they go down the county road going down the East Sopris Creek
410 they pass his pasture fence, and then it is open and they can go on to the hill.

Q. When was it you saw a gate open and the marks of cattle hoofs on the ground?

A. In the spring.

Q. What month?

A. April.

Redirect examination.

By Mr. WARD:

Q. Mr. Finley, during the grazing season of 1907 did you assist any of your neighbors, cattle men, in driving cattle upon the forest reserve?

A. Well, I drove cattle upon the forest reserve, but my man that was working for me was the only one at the time——

Q. Was the forester with you—I mean the ranger?

A. No, he was not. The cattle were coming down below and they called the neighbors together for a little meeting one evening at Mr. Cookman's cabin—bunk house—and there *there* was a good deal of talk about many cows bawling for their calves; they had lost them on the Capital hill road, and we agreed to take our turns riding and keeping those cattle pushed back where there wouldn't be much danger of keeping the calves near by. Cyphers was there, and he agreed to go and help us, if possible. Something happened the day that myself and man got there and he couldn't go, and there was only us two went, and we done what we could.

Q. What did you do?

A. We gathered up cattle from Sopris Creek below Mr. Light's ranch and pushed them back on to the forest reservation.

Q. Did you see any of Mr. Light's cattle?

A. I did.

411 Q. What became of them?

A. They went with the bunch.

Q. To where?

A. On to the forest reservation.

Recross-examination.

By Mr. KNAEBEL:

Q. What month was this?

A. September, I think,—possibly October but I think it would be September.

HARRY M. SHUTTLEWORTH being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. What is your name?

A. Harry M. Shuttleworth.

Q. Where do you live?

A. East Sopris Creek, Pitkin County, Colorado.

Q. About how far from Mr. Light's?

A. About a mile,—a little further.

Q. Which direction?

A. South of west.

Q. How long have you lived in that vicinity?

A. Eleven years.

Q. What is your occupation?

A. I am a ranchman; prior to this year handled cattle.

Q. How much of a ranch have you?

A. I am interested in something like three hundred acres there.

Q. Is your ranch improved?

A. Partially improved.

Q. Under how much cultivation?

A. I have I presume one hundred and fifty or one hundred and seventy-five under cultivation.

Q. Prior to this year how many cattle did you ordinarily run?

A. From fifty to two hundred head.

412 Q. What experience have you had in the cattle business in that neighborhood?

A. I bought cattle the first month I came to this neighborhood in which I now reside, and handled them continuously until this last Spring,—1908; had experience before that in cattle.

Q. How far are you from the forest reserve?

A. I should judge three and a half or four miles,—possibly a little more.

Q. In a direct line west?

A. Well, not in a direct line west; possibly in a direct line due

west it wouldn't be over two and a half or three miles from where I am.

Q. So you sold your cattle out this spring?

A. Yes, sir.

Q. Have you been over the territory in the vicinity of Mr. Light's ranch, the range, in these years?

A. Yes, sir, every year.

Q. Are you familiar more or less with this range?

A. Yes, sir, very familiar.

Q. Have you made an examination of that range this year?

A. Yes, sir.

Q. Are you familiar with conditions on the range this year, on the Fred Light hill north of Mr. Light's ranch?

A. Yes, sir.

Q. Are you familiar with the conditions of the range this year on the territory between Mr. Light's ranch and the forest reserve?

A. Yes, sir.

Q. And to the northwest of Mr. Light's range?

A. Yes, sir.

Q. What has been and is now the condition of Fred Light
413 hill range as to food?

A. Excellent.

Q. What kind of food is there there?

A. Blue-stem grass, bunch grass, and in the jack oak there is a green, narrow-bladed grass; you will find it growing in all clumps of jacks.

Q. What evidence is there of any over-grazing upon this country this year?

A. I can see no evidence of over-grazing.

Q. Were you familiar with the territory earlier in the year, this year?

A. In the spring.

Q. What were the conditions then?

A. Good.

Q. What is the character of the country in reference to the slope, as to cattle grazing?

A. It is rolling; after you get up into it a way it becomes more level; there is parks, and still there are some gulches; but it is what we call rolling, facing the setting sun it is comparatively a smooth, rolling country,—some places abrupt and steep, but, taken as a whole, I would call it a smooth, rolling country, with its abrupt features, as any other mountainous country would have.

Q. How is that fitted topographically for a cattle range?

A. Ideal.

Q. What is the nature of the water available from that range?

A. Good.

Q. What is the character now of the feed upon the unreserved public lands immediately to the west and northwest of Mr. Light's?

A. Good.

414 Q. Have you recently made an examination?

A. Yes, sir.

Q. What, if any, did you find of any evidences as to over-grazing or over-stocking?

A. No evidences of it; there is food there yet for plenty of cattle, more yet than what cattle are on it.

Q. You made an examination with reference to trails in the country west of Mr. Light's?

A. Yes, sir.

Q. Did you find trails?

A. I found trails there, a great many trails leading every where.

Q. Were you able to find any plain, well defined trails as testified to by the witnesses for the government, leading from the bars at Finley's, crossing in a southwesterly direction to the forest reserve?

A. I found no one single trail leading direct?

Q. Did you find any trail that would lead eventually into the forest reserve?

A. There is no trail leading direct that is continuous, from that gate to the forest reserve that I have ever seen or ever been able to find.

Q. What trail or road did you find at the bars?

A. I found a wagon road that I have been familiar with all the time,—drove a wagon over it.

Q. What is that wagon road used for?

A. To haul oak wood.

Q. From what direction?

A. Mr. White hauls wood from there. From which direction?

Q. Where does the wood come from?

A. Back of Mr. Light's ranch, that is west of Mr. Light's ranch.

415 Q. Is that on the forest reserve?

A. No, sir.

Q. Are you familiar with the gates,—I mean the fences in the northern part of Mr. Light's ranch along where his house is, in the meadows?

A. Yes, I know all the fences.

Q. Describe that extreme western fence leading from Finley's ranch north. What sort of a fence is that?

A. Around the pasture, his outside fence?

Q. Yes.

A. That is a very good fence, a barbed wire, and poles.

Q. Is there another fence inside of that?

A. Yes, sir, there is another fence.

Q. What is the character of that fence?

A. That is a good, three-wire fence, and a pole.

Q. And what does that fence enclose?

A. That encloses the meadow,—separates the meadow from the pasture,—that is the meadow from the summer pasture.

Q. The summer pasture you speak of is between the——

A. Public domain and this meadow.

Q. What is the pasture used for by Mr. Light?

A. I saw horses in it and cattle and cows, milch cows.

Q. Do you know where Mr. Light turned his cattle out in the spring of 1908.

A. 1908?

Q. Yes.

A. No, I don't know where he turned them out; I have seen his cattle in 1908 but I don't know from what point he turned them out from; I know he took some cattle from my place to his home.

416 Q. Do you know where he turned them out in 1907?

A. Yes, Sir.

Q. Where?

A. At a point on the Emma road, which is north of west from his house—about a quarter, or between a quarter and a half mile from his house, possibly.

Q. Did you examine that gate on Monday—I mean on Tuesday of this week?

A. Yes, sir.

Q. What access is there from that gate to the Light hill?

A. Why it is open and free.

Q. Can you by reference to Exhibit E, approximately point out the location of that gate?

A. Yes, sir.

Q. Will you please mark it with a pencil?

A. As near as I can judge it is somewhere near a little knoll there—a knoll along here somewhere, in which there is some tall wild rye. Here is the Emma county road running in this direction—(indicating on Exhibit E.)—down here is where it is (witness marks with a cross)—it is along here somewhere.

Q. How far may Mr. Light's cattle range northwesterly from his place?

A. Well, I found—in riding the country I found some of Mr. Light's cattle as well as my own, I would say twelve miles northwest of his place.

Q. When was that?

A. I think it was fall before last, when one of Mr. Light's hired man helped me bring up some, and I brought up some.

Q. How far may they go the other way, southeast towards Aspen?

417 A. I would say they would fully go that distance.

Q. Are you familiar with the Crown country?

A. Only in going there after cattle in the fall of the year, and driving beef through there.

Q. What sort of a range is it?

A. Well, it is regarded a very fine range; it is an unusual range; it is noted as a cattle rendezvous.

Q. Have you made an examination of that range?

A. I have not been over it this year.

Q. What was the condition of the grass there last year?

A. Very good.

Q. What was the condition of the grass near Mr. Light's place on the Light hill last year?

A. Very good.

Q. Have you any idea of the number of cattle that have been ranging in this territory, including the forest reserve, the past year,—1908?

A. Well, I have no cattle myself, but judging—I know pretty near what my neighbors talk, I know approximately what they have; I would say several thousand head.

Q. But you don't really know?

A. No, I don't really know.

Q. Are there more or less cattle than there used to be?

A. Not so many cattle as there were when I first came there four, five, six or seven years ago.

Q. What was the condition of the range as to being over-stocked over-eaten?

A. It was good then.

Q. What was the condition of the cattle?

A. They were good.

Q. What is the condition of the cattle now upon that range?

418 A. As fine as I ever saw.

Q. And the grass now?

A. As good as I ever saw.

Cross-examination.

By Mr. KNAEBEL:

Q. How long have you lived up there, Mr. Shuttleworth?

A. About ten years.

Q. Where did you come from?

A. West Virginia,—Clarksburg, West Virginia.

Q. Is there any stock raising done around Clarksburg?

A. My father owned always from three to ten farms, kept stock, with cattle and horses.

Q. And raised hay,—had pastures?

A. It is considered one of the finest blue-grass countries in the United States; every hoof of cattle raised there are export cattle for the English market, and are shipped alive,——

Q. That is known as blue-grass?

A. (Continuing:) —Harrison County, West Virginia.

Q. Do they cut hay there?

A. Yes, sir.

Q. Now you give it as your opinion that the grass that grows upon the Light hill is as good as that which you are accustomed to in West Virginia?

A. For fattening purposes equally as good as Kentucky, West Virginia or Colorado.

U. M. TROUT being duly sworn, testified as follows:

Direct examination.

419 By Mr. WARD:

Q. Mr. Trout, where do you live?
A. I live at Emma.
Q. How far from Mr. Light's ranch?
A. About six miles,—between six and seven I should judge.
Q. How long have you lived in this country Mr. Trout?
A. Ten years.
Q. What have you been occupied in doing since you came to this country?
A. I have been farming and raising cattle.
Q. Where is your farm or ranch situated; on what creek?
A. Why it is on the Roaring Fork.
Q. How much land have you?
A. I rent it.
Q. Have you any cattle of your own that you run?
A. Yes, sir.
Q. How much of a herd?
A. I have got about eighty head.
Q. How long have you been running cattle?
A. Oh for about seven years.
Q. How long have you been handling cattle?
A. Oh I have been handling cattle about all my life.
Q. How long have you been familiar, if you are familiar, with the range around Mr. Light's place?
A. Why I have been there ten years; ever since I have been there.
Q. How often have you been over the range during the grazing season?
A. Oh, from one to three years, about a dozen times.
Q. Are you familiar with the Crown country?
A. Yes, sir.
Q. How often have you seen that country this year?
420 A. A dozen times I should judge.
Q. What is the character of the feed now upon the Crown country?
A. It is good.
Q. How as compared with its character six or seven years ago?
A. It is as good now as it ever was.
Q. What evidences are there, if any, of any over-grazing?
A. There are not any.
Q. Or over-stocking?
A. Not any.
Q. Are you familiar with the country north,—northeast of the Light ranch known as the "Light hill"?—"Fred Light hill"?
A. Yes, sir, I have rode that about two years ago, I guess.
Q. Do you recognize the photograph, Exhibit E," as being the Fred Light hill?
A. Yes, that is that hill.

Q. Well, have you been over that country and made an examination of it this year?

A. No, sir.

Q. Were you over there last year?

A. Yes, I was there last year.

Q. What was the condition of the feed upon the Fred Light hill last year?

A. Well, there was good grass there last year.

Q. Were there *than* any evidence of over-grazing or over-stocking?

A. No, sir.

Q. How is the water supply upon the Light hill,—available to the Light hill?

A. There is good water there; they have got to go mostly to the creek to drink, to Sopris Creek.

Q. How is the water supply in the Crown country?

A. It is good.

421 Q. Are the banks of Sopris,—East Sopris and West Sopris, precifitous, or otherwise, to interfere with cattle?

A. No they can go up and down there most any place they come to.

Q. What is the flow of water in those creeks?

A. What is the flow?

Q. Yes.

A. I never seen it less than a foot deep in each creek.

Q. And how wide?

A. Oh five feet wide,—four to five feet wide. I forget how many ranches are watered by that creek.

Q. There is an abundant supply of water?

A. Yes.

Q. How much range,—leaving out of consideration the forest reserve, what is the range that Fred Light's cattle can easily avail themselves of, when turned out upon the Fred Light hill in the spring?

A. Oh, they can go—from Fred Light's place they can go to Carbondale.

Q. About how many miles?

A. Well, sir, it must be,—well, it is between twelve and fifteen miles, I should judge.

Q. And what is the character of the feed?

A. It is good; that is the best *they* is right down through there.

Q. And in which direction can they go the other way towards Aspen?

A. I cannot tell you about that; I never rode that range up in there.

Q. Are there many fences in the territory between the Light hill and Carbondale?

A. There is just the Parkers has got a ranch in there and the Dunnigans, and with those two ranches they can go to Fate Girdner's ranch, that is at Carbondale.

Q. Do the fences around the two ranches last mentioned, interfere with the cattle upon that range?

422 A. No, they ain't got a line between the two ranches, and they can go on either side to the ranches.

Q. And may they not go to the north or the south of these ranches?

A. Yes, they can go either way, there is nothing to hinder them going either side of it.

Q. Is there a supply of food sufficient to keep them alive as they go from that country?

A. Yes, that is the best food they got right down through that country.

Q. Do Mr. Light's cattle come down to that country?

A. Yes, I was in there last Sunday and I myself saw a dozen of Mr. Light's cattle in the Crown—maybe two dozen.

Q. How far was that from Mr. Light's place?

A. It is about seven miles, or eight.

Mr. KNAEBEL: The two preceding questions and answers are objected to as incompetent, upon the ground that this evidence concerns facts which are too recent, in view of the time of the initiation of this case, to be competent as evidence for any purpose, such as they are calculated to subserve.

Q. Mr. Trout, if you were compelled to drive and herd your cattle off of the range, off the forest range, what effect would that have upon the cattle business with you?

Mr. KNAEBEL: Objected to as immaterial what would happen to his business, or the cattle business.

A. I would have to sell them if we had to herd them.

Q. Why?

423 A. Because I could not *many* anything herding them,—holding cattle and herding them.

Cross-examination.

By Mr. KNAEBEL:

Q. How many head of cattle have you?

A. I have got about eighty,—somewhere near that.

Q. Did your cattle graze upon the reserve this summer?

A. I never seen but two there. Mr. Powell said there were some U.T. Cows there; I suppose one or two got up there. Mostly I gathered cattle out of the Crown,—sold them to Tucker and Son.

Q. Do you know where your cattle were during the summer?

A. I know where the most of them were.

Q. Now, Mr. Trout, you testified that the water on the range, which is spoken of here as the "Light range", is good?

A. Yes, sir.

Q. You don't mean by that to have it implied that there is plenty of drinking water for cattle up there in among the gulches all through the season?

A. There is plenty of water in what they called the "Williams gulch", good water at Finley's ditch.

Q. Is that on the Light range?

A. Yes, sir, and they got water to the Crown, good water to Copris Creek,—two Sopris creeks.

Q. Now don't let us bite off more than we can chew. I am talking about the Light hill. Mr. Ward asked you about the water on Light Hill.

A. I said they would have to go to the creek to drink.

Q. Is that the only water?

A. There is a ditch on the other side.

424 Q. How far from the creek up to the top of the hill?

A. Oh it is between three-quarters of a mile and a mile; I don't think it is any further than that.

Q. That is the Sopris, is it?

A. That is the Fred Light hill.

Q. No, I am talking about the creek; it is East Sorpis creek?

A. Yes.

Q. And the Sopris?

A. Yes, East Sopris Creek, and that there Fred Light hill they have been talking about.

Q. How far from the top of that hill or ridge down to the Roaring Fork on the east?

A. Oh, it must be—it is further down that way, about a mile or a mile and a quarter, something like that, to the Roaring Fork, and there is a ditch down there closer than that, on the outside of Mr. Stockman's ranch.

Q. Would you call this country,—agree with Mr. Shuttleworth that it was a rolling, mountainous country on the northeast of Fred Light's?

A. Yes, that is a mountainous country.

Q. That is a mountainous country?

A. Yes, sir.

Q. You wouldn't describe it as a rolling country, would you?

A. Well, it is flat when you get up on top.

Q. Is it a mesa up there?

A. Yes, the lower end of it is a mesa, and then after you get across the top of it, it goes down steep.

Q. Take it along about in June or July, how high does the grass stand up there as you wade through it?

A. Oh, I don't know, I couldn't say just how high that

425 comes up there through June and July; there is good grass there now.

Q. How high is it now?

A. Six or eight inches high.

Q. All absolutely thick, is it?

A. Why no, it ain't thick.

Q. It isn't like a blue-grass country, is it?

A. No, you cannot go on there and mow with a mowing machine; there is good grass there for cattle.

Q. How high is it in July?

A. I don't know as I was ever there in July.

Q. You know all about it when it is good, but you don't know as much about it when it is bad?

A. I have been up there along this time of the year, and I know there was grass there.

Q. And cattle have not been there as much during the middle of the summer, have they?

A. I couldn't say as to that.

Q. You know that is used as a Spring range?

A. I know it *us* used as a spring and fall range.

Q. But so far as its being used during the hottest months you don't know?

A. Well, if they get up there I think they stay there. I have seen cattle up there all the time going up and down the road; you can see continuous trails, up and down that hill, of cattle.

Q. Trails made going up or coming down?

A. Well, I suppose they are made both ways.

Q. Do you think any cattle that got up on that hill once would stay there all summer?

A. No, sir, I wouldn't say that.

Q. I don't mean to misinterpret you, but I think that was your answer.

A. I said cattle would go up and down there, and some
426 would stay there all summer. All cattle that would go on there wouldn't stay there, they travel backward and forward.

Q. What is your explanation, Mr. Trout, of the fact that notwithstanding the grass is so fine on that hill, that all the cattle don't stay there, that most of them go away?

A. There is good grass in the Crown, and they don't all stay there.

Q. They don't most of them stay there, do they?

A. No, they don't most,—yes there is a good many cattle there in the Crown; there must be four or five hundred cattle in the Crown now.

Q. But there are twenty-five hundred to three thousand head of cattle turned out, according to one witness, on that general range there. Now this Crown country, as I understand it, is one of the best parts of that entire range, and you say there are five hundred head there. Where do those go?

A. They are around down on the Fred Light hill, and Prince Creek and Thomas Creek.

Q. Could you explain a little more clearly, if you would, why, in your judgment, the cattle don't all,—I won't say all—why most of the cattle don't stay on this range, instead of going up on to the reserve?

A. Well, the grass gets tender, and the flies are worse down below,—the grass gets tender and they work up as the flies gets a little worse down below.

Q. But you don't think that the feed question has anything to do with it, except as to tenderness or toughness of the grass?

427 A. No, I believe it is just as good grass as they get,—always tender.

Q. How far do they have to go for water in the Crown country?

A. Let me see,—there is three springs,—there is four springs over there and two lakes.

Q. Are you very familiar with that country all through the year?

A. Yes, sir.

Q. All through the summer?

A. I have never been there after I—in the fall I never go there after I get the cattle in for the winter.

Q. Is there excellent water there?

A. Yes, sir, spring water runs out of the ground.

Q. Where are the springs with reference to Sopris Creek?

A. Right north, right straight over the hill right north, there is two springs there.

Q. How far off from the creek?

A. The first one is about a mile; then there is a lake about a quarter of a mile from that one.

Q. A lake a quarter of a mile away, not a quarter of a mile from one lake to the other?

A. A quarter of a mile from one lake to the other, and about a half mile or a mile across to another spring.

Q. Are these springs up on top of the hill?

A. Yes.

Q. Right up on top, are they?

A. The ridge rolls over and the springs are right underneath them; there is water in there now three feet deep.

428 Q. How about the water in those lakes in the midsummer,—not this year, but an ordinary dry year?

A. There is always water in them lakes.

Q. Plenty of water?

A. Yes, sir; there is one place that the dam went out and the water runs down from the spring three or four hundred *years* right on top of the ground, and goes down in the gulch.

Q. What is your opinion, Mr. Trout, about whether the unreserved public lands would be enough for all the cattle, cutting out the reservation?

A. Yes it would, what there is now.

Q. You think so, do you?

A. Yes, sir.

Q. You think that it would be a good thing for the community to cut out the reservation entirely?

A. Yes, for grazing purposes I think it would be just as good if they would fence them; I would rather have them fenced as to be the way it is now, and let them keep their fees.

Q. If that reservation were fenced, no matter who did it, would you feel that you would like to make any use of the reservation at all?

A. I suppose if I did I would have to pay a pretty good price for it.

Q. Suppose you didn't have to pay anything?

A. The way this thing is coming up you wouldn't get anything there for nothing.

Q. I want to get at your views of the reservation. Suppose it were fenced off and you had the privilege of putting your
429 cattle in there or not, as you chose, do you think you would use it?

A. I would use it to get free grass, but I wouldn't pay anything for it; I ain't paid so far.

Redirect examination.

By Mr. WARD:

Q. Mr. Trout, what would happen if the forest reserve was fenced off from cattle, and no cattle allowed there; what would happen to the grass on the forest reserve?

A. Well, if they fenced that off and wouldn't allow no cattle on it the fire would come out and burn the whole country, if they got fire on the range it would burn the whole country up.

Q. So what profit is there to the reserve for cattle eating the grass off?

A. I should think it would be profit for the cattle being in there.

Q. As to a protection, what protection is it?

A. It would keep the fire down I should think.

Q. What percentage of fires have there been since cattle ate on the ridges, as compared with the time before cattle came here?

A. Why there hasn't been a fire up there since I have been there; there has been cattle there all the time. There has been fires up there, I could see where it went.

Q. You could see traces from a fire?

A. Yes, sir.

Q. Since you have been here there have been no fires?

A. No, sir.

Q. Do the cattle eat the trees up there?

430 A. No, they don't; I never seen no cattle eating pine trees.

Q. What effect, if any, does grazing by the cattle have upon the trees of the reserve?

A. I don't think there is any.

Q. Where is the best grass of the forest reserve?

A. Off in them parks; where there is a park there is pretty good grass.

Q. What do you mean by "parks"?

A. Take Hay Park, you know, and those parks like that where there is no timber.

Q. Now is has been testified to here upon questions on cross-examination, about the reasons why cattle stray around. What do you think the reasons are for the cattle straying around, never staying in one place?

A. Well, they have different reasons. You take and turn them out, they won't stay in one place, they want to roam around; and if you buy a bunch of cattle, say about ten or twelve miles away, they will want to go back on the same range they were bought from. I

bought a bunch last fall and one, she went about ten miles back to her old range.

Q. Was that on account of better grass on the old range?

A. No, just acquainted with the old range.

W. L. GIRDNER, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

431 Q. What is your name?

A. W. L. Girdner.

Q. Where do you live?

A. I live near Carbondale, Garfield County.

Q. What is your occupation?

A. Farmer and stock-raiser.

Q. How long have you lived in this country,—western Colorado?

A. For the last -wenty-four years in that vicinity.

Q. With whom are you connected in your business?

A. With the Dingle Mercantile Company.

Q. How much land does your company control?

A. We have got fourteen hundred acres, or nearly that,—not quite.

Q. Under what use?

A. Most of it is in farms, and some pastures.

Q. And what do you raise on it?

A. We raise hay and grain, potatoes and beets.

Q. What livestock have you?

A. We turn out four hundred head of cattle and fifty head of horses.

Q. How long have you been handling cattle in that locality?

A. Thirteen years.

Q. Are you familiar with the range, and range conditions in that locality?

A. I am.

Q. Are you familiar with the conditions extending as far as Mr. Light's ranch?

A. I am.

Q. You have had occasion to go over these ranges, have you?

A. I haven't rode much for the last two years, but I have been over the range once in the last month; I rode over a part of

432 the public domain, and was up in the forest reserve,—that is the only trip; I have a man that rides all the time.

Q. During this trip that you speak of, did you notice the conditions of the food upon the range?

A. I did.

Q. On what part of the range was that?

A. I rode across the government land,—what we call the public domain there,—a six miles strip, and into the forest reserve about,—probably two miles.

Q. Where was this six mile strip you speak of, in reference to the Crown country?

A. The Crown country is in the midst of this six mile strip.
Q. What was the condition of the grass?
A. It was very good.
Q. What was the condition compared with years past?
A. I think it was as good as I ever saw it.
Q. How did you find the grass up on the forest range?
A. It wasn't very good where I was; I was in Hay Park; there was very little grass there.
Q. It had been eaten off, had it?
A. I don't know whether it had been eaten off, or whether it hadn't grown, there were no cattle there, and there didn't seem to be anything there.
Q. Do you see any damage done to the forest growth?
A. No.
Q. What would be the effect of keeping cattle off of the forest reserve entirely, as to the grasses and weeds growing there?
A. My opinion would be, it would be very injurious to the forest.
Q. In what particular?
433 A. Grass and weeds would grow up, a fire would get started and burn all the timber off from it in the whole country.

Mr. KNAEBEL: The question is objected to, and the motion is made to strike out the answer, on the ground that it is immaterial to the issues in this suit whether the cessation of grazing would or would not result in fire, or injury to the reservation.

Q. How frequent are forest fires now, compared with when you first came to this country?
A. It has been several years since we have had a forest fire; about ten years ago, I think it was, we had very frequent fires, when there was more undergrowth.
Q. For what reasons do you think this took place? Why was this?
A. Well, I think that the cattle grazing there has kept the foliage down, and there is not as much to burn,—except green trees.
Q. How many head of cattle did you say you have been running this year,—how many cattle?
A. I turned out four hundred.
Q. Have you any idea of the number of cattle that have ranged and grazed this past season,—1908, in the territory between Johnny Williams' place and Carbondale,—do you know?
A. Well, I would estimate about twenty-five hundred,—maybe three thousand, I don't know.
Q. How does that number compare with the number of cattle that have been grazed upon it in former years?
A. It is hardly half what they used to run there.
Q. How many cattle will this range, including the forest
434 reserve and the unenclosed lands south of the Roaring Fork in the limits I have given, support?
A. Do you mean the government land, or the forest reserve and the government land?

Q. I mean the government land, all the open land from Mr. Williams' place to Carbondale?

A. I would judge about eight thousand.

Q. Have you seen during the past year any evidence of overgrazing in that territory?

A. I have not.

Q. How about in years past?

A. Well, we have always had plenty of grass there.

Q. What is the character of this blue-stem as to putting meat and fat upon cattle?

A. Blue-stem is the best grass we have in this country for fattening purposes.

Q. Is the value of that confined to the early spring growth?

A. Oh, no, it is all summer, and then in the fall it cures up, and it is good until it is covered with snow.

Q. When do the cattle really begin to put on the fat?

A. Well, about June we begin to get beef from the Crown country, and they keep fat, too, from that on.

Q. And you get beef in June?

A. Yes, sir.

Q. And what do they live on?

A. Blue-stem and other grasses.

Q. What constitutes a majority of the grass there, what kind of grass?

A. In the low country——

Q. You mean on the Crown country?

A. Yes, the Crown country—it is mostly blue-stem, and up higher it is in different grasses, more bunch grass and peas, and other grasses higher up.

435 Q. What are the water conditions of the Crown country?

A. Well, it is well watered all over the whole country; there is no scarcity of water any place.

Q. What are the water conditions of the country spoken of as the "Fred Light hill"?

A. I am not very familiar with it, but there would be no distance for cattle to go to water; I don't think over a mile, and that is not far.

Q. You are familiar with Capital Creek where it strikes the Fred Light hill?

A. Yes, sir.

Q. Is it possible for cattle to get water there?

A. Oh, yes, get water from a good many places.

Q. From the Fred Light hill?

A. Yes sir.

Q. Take East Sopris, how are the banks there?

A. East Sopris, wherever you go you can get to the water anywhere; Mr. Light has a fence there a little west, and below his fence two or three miles they can get to water anywheres they go to the creek.

Q. Is this country so inaccessible to water as to prevent profitable cattle raising?

A. Well we never think about any dry places,—always have plenty of water,—cattle goes to water any place there.

Q. What would be considered, according to your customs and practices as Fred Light's range?

A. We don't consider anybody has a range; it is always public domain, we share and share alike; we all turn out and the
436 cattle gets mixed up from—we will say from Aspen to about six miles south of me; oftentimes I gather up Fred Light's cattle and put them in the field, and he does the same with mine, and they scatter for twenty or twenty-five miles along there, and so Fred Light's range we think is all alike, the whole country.

Q. If Fred Light should turn his cattle northeast of his ranch upon what is called the Fred Light hill, in the month of April, and those cattle, some of them, should be found upon the forest reserve in the month of June, could you give any reason for that?

A. I could not.

Q. Could you give any reason if they should be found in the Crown country in the month of June?

A. I could not.

Q. What are the habits of cattle in reference to staying in one place?

A. They seem to wander around a good deal.

Q. Is it caused by food, or their habits and instincts?

A. It is not caused by food; sometimes they are driven, sometimes they naturally go from one place to another—leave good feed to go to another place; I don't know why that is, but it is the case.

Q. Have you taken out a grazing permit?

A. I did.

Q. Why, Mr. Girdner?

A. Well, I thought it was cheaper than these lawsuits.

Mr. KNAEBEL: That last question and answer are objected to, and the motion made that the answer be stricken, upon the ground that the motives of the witness in taking out a permit are not material to the question whether the rights of the plaintiff have been
437 infringed, or are likely to be infringed by the defendant.

Cross-examination.

By Mr. KNAEBEL:

Q. Mr. Girdner, I would like to have the explanation again, if you will,—your theory of the value of the cattle up there in the protection of the reserve against fire?

A. Well, as I stated before, when a great accumulation of weeds and grass and underbrush comes up there is more danger of them burning when it is dry than if it wasn't there; that is the only explanation.

Q. Is that a theory of yours, or have you ever examined it?

A. Oh, yes, I say that is my opinion.

Q. Do you know of any example which you can cite?

A. Only by no fires being there since the cattle have been there.

Q. When were the fires you have referred to, in this forest reserve,—how long ago?

A. I think it was ten years ago that we went up there, all us fellows, and fought fire for a time,—had a very serious fire.

Q. Is that the only fire you remember?

A. Oh, no, many fires before that.

Q. None since?

A. There have been some since, yes, but there hasn't been any for two or three years in this vicinity.

Q. You think that is due to the cattle?

A. I actually believe that the cattle themselves protect the forest there, in grazing the grass off.

Q. Now you said when you went up there the Hay Park
438 grass was all eaten off?

A. I don't know whether it was eaten off; there was not much there; looked like it was pretty barren.

Q. You remember in the old days that it was pretty long?

A. It never was very long there since I have been there.

Q. Your estimate of the total number of cattle that are there now was from twenty-five hundred to three thousand in the valley?

A. Yes, I should think so; that is about what I would estimate it.

Q. When were there eight thousand cattle in there?

A. I didn't say eight thousand; I say that I think it would support eight thousand, the whole territory that I included; there is lots of territory there.

Q. When was that, that there were so many cattle up there?

A. About ten or twelve years ago, a great many, but not eight thousand; I think we have had five thousand there.

Q. Well, as the country has been settled up haven't they gone to farming more?

A. No, it being a forest reserve you can not settle in that. There is just about the same grazing territory as there was then,—ten years ago.

Q. Have you got your eye on any peice of land in the forest that you would like to settle on?

A. No, they have barred me out.

Q. You are not feeling very good over there?

A. Oh, yes, I am good friends with the forest people, we are getting along fine.

Q. What was the trouble?

A. I don't know as that would come in here,—no trouble about it at all; if the forest people don't want their lands settled up
439 why that is all there is to it.

Q. You did have some little difficulty over some kind of an entry, didn't you?

A. Yes, some little difficulty over an entry?

Q. But no hard feelings?

A. Oh no, none whatever.

Q. You rode over the range through the Crown country last month?

A. No, I didn't ride through the Crown country; I said I rode over the government strip that the Crown is in; I didn't go through the Crown.

Q. Well, about where did you go; what was the line of your ride?

A. I rode almost due south right across the strip of land that runs along—our ranch comes out next to this, and then there is government land to the forest reserve—a six mile strip there—and I went right straight south almost.

Q. Your ranch is down near Carbondale?

A. Yes, sir.

Q. Carbondale is on the Sopris river?

A. No, on the Crystal.

Q. Oh, on the Crystal river?

A. Yes, sir.

Q. That is over further west than Sopris?

A. Yes, further west.

Q. Wouldn't you pass through the Crown country if you went due couth?

A. No, sir, I went south after going—I went to the right after going south; it was west then.

Q. And you didn't pass through the Crown country on your ride last month?

A. No, I haven't been there this summer. I was there last year.

Q. You said the grass was good below,—very good?

A. Yes.

440 Q. And the grass in the forest was poor?

A. Oh, no, in this Hay Park—pleas- let me tell it the way I did—In the Hay park there was poor grass there.

Q. Was all the grass in the forest poor?

A. Oh, no, the grass in the forest was good grass.

Q. But it was eaten off close enough so as not to create fire?

A. Well, the most of the distance I went over was, I don't know how is was all over.

Q. What, in your judgment, Mr. Girdner, is the reason why the number of cattle in that valley there, and on that range, has diminished?

A. Well, on account of making a profit. Our expenses are getting higher and higher each year; we have to pay the government twenty-five cents a head.

Q. You haven't had to pay that——

A. The cattle business is not as flourishing as it was.

Q. You haven't had to pay the government twenty-five cents a head any length of time?

A. One year,—two years anyway; I don't know whether we paid twenty-five cents the first year or not; and then, to more fully explain, a great many have gone to farming and quit the stock business.

Q. That is up in that region?

A. Yes sir.

Q. Agriculture is increasing there, is it?

A. I think it is.

Q. What is the comparison between the products, so far as you know, of that valley, of an agricultural character, and the
441 value of the stock up there?

A. Oh, there is a vast difference, I couldn't hardly estimate the difference.

Q. The stock is more valuable?

A. No, agriculture is more valuable.

Q. Is it?

A. Yes.

Q. When you put stock in the Crown country you would find some of them got up in the forest, wouldn't you?

A. Very few; not unless they were driven they wouldn't be but a few go; I think I had a hundred head in the Crown nearly all summer out of that four hundred, and I found three head on the forest reserve that day that I went up.

Q. Has the fencing in of ranches in the valleys of the Sopris and Roaring Fork interfered much with cattle ranging?

A. But very little.

Q. They can get through all right, can they?

A. There is plenty of summer range, and the hay is raised on the farms, so that it is better than it used to be when we run them for feed.

Q. Really there is more feed produced there now than there used to be, isn't there?

A. Yes, sir, very much more.

Q. You spoke about the possibility, or the fact rather, of cattle getting mixed up all the way from Aspen to Carbondale?

A. I did.

Q. Now you don't mean by that, Mr. Girdner, to have it understood that there is a general range of country extending from
442 Carbondale to Aspen that is just so very wide, and that when the people turn out their cattle any place along there from their fences into it and let them go freely, at the end of the grazing season they will all be indiscriminately mixed up from one end to the other; that you are just as likely to find a Light cow up to Aspen and another one down at Carbondale, as to find them any other place, do you?

A. I certainly do; that is the way they turn them.

Q. So that they are absolutely mixed?

A. So that they are absolutely mixed from one end of the range to the other.

Q. Uniformly scattered all over that range?

A. Not uniformly, but you are liable to find anybody's cattle any place.

Q. You mean you may find some?

A. You wouldn't find them all mixed up, but when you turn out the cattle in the spring they turn them up and the cattle wander where they please, just go every place; there is very little riding done, and cattle go where they please, and in the fall we gather them up. Mr. Light will send word to me if there are any of his cattle in the field to gather them up, and I do the same with

him, and after a while we exchange our cattle and get them all home. That is the system of our cattle business over in this country.

Q. How many of Mr. Light's cattle did you find this year?

A. I believe I got three, and then I told him where there was two more at a neighbor's six miles south.

Q. That is merely a case of cow wandering, or a steer,—
443 kind of a Christopher Columbus among your cattle that wanted to discover a new country?

A. I couldn't tell you, because I am not acquainted with the cow language.

Redirect examination.

By Mr. WARD:

Q. Mr. Girdner, in speaking about the cattle men going out of business the last few years, what, if any, effect does the enforcement of the rules and regulations of the Forestry Department have upon the cattle business?

Mr. KNAEBEL: Objected to as irrelevant, because this is not the way to settle this particular lawsuit, by raising that question; that question must be determined in some other form, by some other means.

A. There seems to be a great deal of dissatisfaction with the rules and regulations of the forest reserve, and adding on this fee still, that makes it a little more expense, and that is the only reason in regard to forestry that I know of, that they are quitting the business.

Q. I read you from "Defendant's Exhibit H", being an application for grazing permit, as follows: "I also agree to forfeit the permit whenever the National Forest for any reason ceases to exist, or for a violation of the National Forest regulations now or hereafter adopted, or of any of the terms hereof, or whenever an injury is being done to the forest by reason of the presence of the
444 animals therein." Does that provision in the application for a permit have any effect upon the cattle business in that locality?

Mr. KNAEBEL: That is objected to as incompetent, and as calling for an opinion of the witness, upon which there is no bases or competency shown for the witness to answer, and which, if answered, would be wholly irrelevant to this judicial proceeding.

A. Well, this is a pretty hard rule and regulation; we have all signed it, and I suppose we will have to live up to it, but signing the "hereafter" there to comply with the rules that may be made, we don't know, we might not want to.

Q. You are afraid of the hereafter, are you?

A. I have been; I am all right now.

Q. I read you Regulation 47 from the 1907 Use Book, set out in the bill of complaint of the United States against Fred Light; Persons owning cattle and horses which regularly graze on ranges loca-

ted along the boundary line and only partially included within a National Forest may be granted permits for such portion of their stock as the circumstances appear to justify, but may be required to herd or so handle their stock as to prevent trespassing by that portion for which a permit is not granted, and to sign a supplemental agreement to that effect.

What effect, if any, does the enforcement of such a rule have upon the cattle business in your locality?

Mr. KNAEBEL: Objected to upon the ground that it is incompetent and immaterial.

445 A. It would have the effect that we could not run cattle if we had to herd them off the forest reserve.

Q. Is such a rule a reasonable rule for the protection of forest?

A. I think not.

Q. Is it a reasonable rule for the management of the cattle business?

Mr. KNAEBEL: I move that the preceding question and answer be st-icken out as incompetent, asking the witness's opinion whether it is a reasonable rule, and immaterial as bearing upon no issue in this case; and I object to the last question upon the same ground.

A. It is not a reasonable rule.

Q. Are you acquainted with the general opinion of the cattlemen of standing and integrity in the Roaring Fork Valley, as to their views of the reasonableness of the rules and regulations of the forestry department?

Mr. KNAEBEL: Objected to upon the ground that it is entirely immaterial whether such opinion exists, or whether this witness knows of such an opinion, inasmuch as that question is one which might have its influence in determining a matter of executive policy but can have no influence whatever in a judicial proceeding to determine the question whether a trespass, or trespasses, were or were not committed, or are or are not threatened.

A. I am acquainted with the opinion.

Q. Now what is the opinion?

446 Mr. KNAEBEL: Objected to upon the same ground as the last specified.

A. They are all opposed to the policy of the forest reserve, is the opinion of all of them in that vicinity up there.

Q. What is that opinion?

A. It is the expense, and the rules and regulations that we would have to abide by, is the objection to it.

Q. Why do they object to them.

A. Because we have always had the range free, and we feel like we need it yet to make a living.

Q. What is the effect of putting salt upon the higher range, as to cattle being led up there?

A. Wherever salt is placed it has a tendency to lead cattle to it; they stay there better.

Q. What would be the effect upon Mr. Light's cattle, the fact that there is a large amount of salt placed upon the forest reserve in the vicinity of Mr. Light's range?

A. They are liable to follow the other cattle into the forest reserve.

Q. Do you know whether or not the cattle men in your vicinity have generally taken out permits?

A. They have generally; some of them haven't, but generally they have taken out permits.

Q. Do you know what causes have influenced them to do so?

Mr. KNAEBEL: That is objected to, first, because it is asking for the opinion of the witness, the results of his conversation with others, or rumors; because even if he could testify directly on the
447 points, it is not material in this inquiry what motives influenced any person to take out, or to refuse to take out a permit.

Q. (Question read by stenographer).

A. I suppose it is to comply with the rules of the department.

Q. Has the fact that Mr. Fred Light has been sued, had any influence or not in these matters?

Mr. KNAEBEL: Objected to upon the same ground as stated for the last objection.

A. On others, or on myself?

Q. On others.

A. I could not say.

Q. Has it had on yours?

A. None whatever.

Recross-examination.

By Mr. KNAEBEL:

Q. Now, Mr. Girdner, you testified that you didn't know the cattle language?

A. Yes, I don't know it.

Q. I would like to ask how you know, then, how it is that you know that the putting of salt upon the higher ridges of this reservation, many miles away from Mr. Light's ranch, would induce cattle bought by Mr. Light and carried into that country from a distance, to go away up there on the reservation when they had never been there before?

A. I believe I stated that they were liable to follow up other cattle,—they are liable to follow up other cattle.

Q. That is your answer in reference to the salt. Do you know that one cow tells another?

A. I don't know.

448 Q. Don't you think they would follow cattle if there were not salt up there?

A. They might.

Q. So far as the wisdom of putting salt upon the range is concerned, you don't say it is unwise, that it is not a good way to use the forest range, do you?

A. That is an opinion that I am not able to testify to; but some very good stockmen claim it is unwise to put salt on the range. I think it is wise, but then that is only my opinion; there are others that say it is a bad thing.

Q. You have never been required to herd your cattle away from the line have you?

A. I have not.

Redirect examination.

By Mr. WARD:

Q. What effect would the salt placed upon the forest reserve have upon over-grazing those portions of the forest reserve?

A. Wherever there is salt there is not much grass around it for a ways; it is eaten off more around the salt than any other place, and close to the salt they stay there and eat off the grass.

Q. So what would the effect be of putting salt upon the forest reserve?

A. It would have the effect of holding the cattle near the salt, and there would be grass there that would be poor for some little distance around, and they would go there for a lick of salt and naturally make a kind of stopping place.

Q. And what would be the effect upon the grass in the vicinity?

449 A. Well, it would be eaten off closer than where there was no salt.

J. W. ZIMMERMAN, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. What is your name?

A. J. W. Zimmerman.

Q. How -ong have you lived in this western Colorado, Mr. Zimmerman?

A. Twenty-five years last April.

Q. What has been your occupation during that period?

A. I have been a ranger, and a stock-raiser on a small scale.

Q. How long have you handled stock?

A. I bought the first cattle I ever owned in 1884, twenty-four years ago last August.

Q. And you also engaged in ranching?

A. Yes, sir.

Q. What official position, if any, do you now occupy?

A. I am Sheriff of this county, Garfield County.

Q. You have cattle now on the public range?

A. Yes, sir.

Q. Hove you been at any time familiar with the range between Mr. Light's place and Carbondale?

A. Yes, sir, I have raised cattle on that part of the range for about fifteen years, anyway, continuously.

Q. Are you familiar with the condition of that range this year, personally?

A. No, sir, I have not been on that part of the range for about four years.

Q. During the period when you ran your cattle upon that range, how many cattle approximately, were run on the territory
450 between the Williams Brothers ranch and Carbondale, including the forest reserve to the south of Roaring Fork.

A. Oh I should think somewhere from four to five thousand head for several years anyway.

Q. What effect, if any, as to over-grazing did the running of between four and five thousand head upon that territory have?

A. Well, the range is not as good as it was in 1884 and '5,—it is not now, but it was better four years ago than it was eight years ago. There were a great many horses run in there one time winter and summer, and cheap ponies that ran in there, that nobody got any good out of, and they finally sold them out at five, seven and eight dollars a head and shipped them out of the country, and the range has improved ever since that.

Q. What change has been made on this range in the last five or six years by fencing or ranches?

A. Very little, if any; there have been very few ranches been taken up in fifteen years in that country—very few.

Q. So as regards *to* extent of territory, how much open, unfenced land is there now as compared to ten years ago?

A. Practically the same.

Q. And if I understand you right, the present range is better, or as good, as it was then?

A. It is better than it was ten years ago; it was the last time I have been over that part of the range.

Q. How many cattle, in your opinion, will the territory from Williams Brothers to the southeast, down to Carbondale on the northwest, including the forest reserve, support now?

451 A. Oh I should think anyway five or six thousand head.

Q. You don't know how many have been running there this past year?

A. No, sir, I do not.

Q. Have you some cattle in the Crown country or that neighborhood this year?

A. I understand that I have got fifteen or twenty head in there that have strayed back in that part of the country but I don't know.

Q. Are you familiar with the general condition of the range in that territory this year, as compared with early years?

A. Only from what I have heard other- say.

Q. Only from what you have heard others say?

A. Only from hearsay.

Q. Have you taken out a permit to graze your cattle on any portion of the forest reserve?

A. No, sir.

Q. You are the Zimmerman against whom suit has been brought by the United States recently?

A. Yes, sir.
Q. To recover damages and injunction, and so on?
A. Yes, sir.
Q. Why didn't you take out a permit, Mr. Zimmerman?

Mr. KNAEBEL: Objected to on the ground that it is immaterial.

A. Well, I didn't consider it was right and proper that I, as a free American citizen, should have, as most of the people express it,—to have some body come around and tell me how to run my business, and I object to signing an application there to permit us to do things that I can not do, and follow the business.

452 Q. Did you want your cattle upon the forest reserve?

A. No, sir, there is plenty of good grass outside for my cattle; if they would fence it up I believe my cattle would do better than they would on the forest reserve.

Q. Were there any efforts made by forest officials to persuade you to take out a permit?
A. Yes, sir.

Mr. KNAEBEL: This is objected to, what transpired between this witness and the forest officials has nothing to do with any issue in the present case.

A. They simply threatened that they would put me out of business; I couldn't never have any privileges on the forest reserve if I didn't take out a permit.
Q. Who made such a threat?
A. Mr. Arnold finally told me that.
Q. Any others?
A. Well, I don't know whether it was in the form of a threat, or friendly advice from some men that I was quite well acquainted with,—had known for years.
Q. Connected with the forestry service?
A. Yes.
Q. Who was the Arnold you mention?
A. I think they introduced him as from the legal department of the forestry department from Washington, D. C.

Cross-examination.

By Mr. KNAEBEL:

Q. Made a threat on your business, did they? Do you
453 refer to your business?

A. What, say?
Q. Did he say he would put you out of business?
A. He said if I allowed the forest service to bring suit against me that it would forever debar me from having the grazing privileges on the reserve.
Q. He didn't use the words "debar you from business," did he?
A. No, sir; a refusal of that permit would have that effect so long as the forest reserve is open, and is not fenced. If they could bring suit against me any time any one of my cattle strayed over

the forest reserve why I have got to quit the business, because I can not fight the forest service.

Q. You don't claim any ownership in this land within the reservation, do you?

A. As a citizen of the United States.

Q. You are no more interested in it than any one else, are you?

A. No, sir, not any more than any one that lives near to it.

(Recess until 7 o'clock P. M.)

FREDERICK LIGHT, being duly sworn testified as follows:

Direct examination.

By Mr. WARD:

Q. What is your name, Mr. Light?

A. Frederick Light.

Q. Where do you live?

A. On East Sopris Creek.

Q. What county?

A. Pitkin County, Colorado.

Q. How long have you lived there?

A. Twenty-eight years,—since 1880.

454 Q. What is your occupation?

A. Stock raising and farming.

Q. What has been your occupation since 1880?

A. Stock raiser and farmer.

Q. About how many acres have you in your ranch, under your own individual ownership and control?

A. About eight hundred and eighty acres.

Q. Is that the land described in the second paragraph of the eighth page of your answer?

A. Yes sir.

Q. The description there is correct?

A. Yes, sir.

Q. What do you raise on your ranch, Mr. Light?

A. Hay, oats, barley and potatoes.

Q. Are you a man of family?

A. I am.

Q. What size family?

A. I have eight children, four boys and four girls.

Q. Where were they born?

A. All born on Sopris Creek.

Q. On the ranch?

A. On the ranch.

Q. What, if any cattle have you been handling?

A. Commenced with a very small herd, and worked the herd up to about six or seven hundred at times.

Q. About how many cattle did you turn out on the unreserved lands last year, 1907, in the spring?

A. About four hundred.

Q. About how many did you turn out this year?

A. About one hundred and seventy-five.

Q. I hand you a photograph marked "Defendant's Exhibit A"; what is that a photograph of?

A. That is a photograph of Finley's ranch, I think.

455 Q. Do you know when that was taken?

A. Taken about the—well it was taken the 6th or 7th of May,—the 7th I guess.

Q. I hand you Exhibit B., a photograph; was that taken the same time?

A. Yes, sir.

Q. What is that a photograph of?

A. This road is known as the "Emma road" at the lower end of my ranch.

Q. By whom was that taken?

A. I think it was taken by Mr. Fred Johnson.

Q. Who else was present?

A. Mr. Ward and myself.

Q. I hand you Exhibit C. What is that a photograph of?

A. That is also the lower end of the ranch.

Q. Taken the same date?

A. Taken the same date.

Q. I hand you Exhibit D. What is that a photograph of?

A. That is a photograph of the lower end of my ranch.

Q. Taken what date?

A. Taken at the same time the others were taken.

Q. I hand you Exhibit E. What is that a photograph of?

A. This is a photograph of my ranch?

Q. And what other country in the bac*h*ground.

A. What is known as the "Light hill".

Q. Taken the same date, was it, by the same person?

A. Taken at the same time the others were taken by the same person.

Q. I hand you Exhibit F. What is that a photograph of?

A. Well this is taken close to my ranch. This is Mr. White's,—a portion of Mr. White's field.

456 Q. And the mountains in the background, what are they?

A. The background is the forest reserve close to the snow.

Q. I hand you Exhibit G. What is that.

A. A grazing permit.

Q. In blank?

A. In blank.

Q. I had you Exhibit I. What is that a photograph of?

A. That is a photograph of Mr. Shuttleworth's ranch.

Q. Taken the same date?

A. Taken the same date.

Q. I hand you Exhibit J. What is that a photograph of?

A. This is a photograph taken at the lower end of my ranch, showing the west line of my meadow land.

Mr. WARD: We offer exhibits A to J in evidence.

Mr. KNAEBEL: We object. Counsel for complainant can see no materiality in the exhibits.

Q. Mr. Light, how long have you been familiar with the range around your ranch.

A. Oh, in the twenty-eight years since I have been there.

Q. What is the extent of the range available to your cattle now?

A. My cattle ranges from Aspen to Carbondale.

Q. What is your usual range for cattle—the last two years for your cattle?

A. That is the usual ground they run on.

Q. What distance is it from the Williams Brothers ranch to Carbondale, approximately?

A. Let's see—it is about fourteen miles.

Q. How wide is the range, on an average, between Roaring Fork river and the forest reserve?

A. Well, five to six miles wide.

457 Q. Have you noticed the grass on that range this year?

A. I have, yes, sir.

Q. Have you made any special examination of the grass?

A. I did.

Q. For what purpose?

A. To ascertain whether it had been overgrazed, or whether there was a shortage of grass.

Q. What is the present condition of the grass now on what is known as the "Light hill"?

A. It is in good condition.

Q. What is the condition of the water as to being available for cattle upon the Light hill?

A. It is a well watered hill.

Q. Have you examined the grass in the territory between yours and the forest range to the west?

A. I have.

Q. What is the present condition of the grass?

A. It is good.

Q. What was the condition of the grass during the summer upon that range?

A. It has been good all this year and last year.

Q. What was the condition of the grass during the summer upon the Light hill?

A. Good.

Q. What evidence, if any, is there of over-grazing or over-stocking of the Light hill now?

A. It has not been over-grazed, nor is it over-stocked.

Q. Has it at any time during the year 1908 been over-grazed or over-stocked?

A. No, sir.

Q. What is the condition in reference to the range west of you, as to over-grazing and over-stocking?

A. It has not been over-grazed nor over-stocked.

458 Q. During what period?

A. I never knew it to be over-grazed nor over-stocked.

Q. Say what was the condition of the Light hill as to grass during the year 1907?

A. It was good.

Q. And what evidences were there of over-grazing or over-stocking?

A. There was no evidence of over-grazing nor over-stocking.

Q. Have you examined the grass in the territory northwest of you, toward the Crown country?

A. I have.

Q. This year?

A. Yes, sir.

Q. What is the condition of the grass?

A. It is good.

Q. What evidence, if any, is there of over-grazing or over-stocking this year?

A. There is no evidence of over-grazing nor over-stocking.

Q. What is the condition of the water upon the country northwest of you in the direction of Carbondale, or up to Carbondale?

A. It has good water-holes and creeks of various kinds everywhere.

Q. In the country commonly known as the "Crown country" what is the water there especially?

A. It is good; it has the Roaring Fork on one side, Sopris Creek on the other, couple of lakes and two springs.

Q. Now is there any grazing territory available to your cattle west of the Crown country and between that and Crystal river?

A. West of the——

Q. Crown country.

A. Yes, clean to Carbondale.

Q. What is the extent of the range from the Crown country proper over to Crystal river in miles?

459 A. I should think from Crystal river to the Crown it is about four miles. The Crown country is about four miles, and from the Crown, from the western boundary of the Crown it is about four miles to my range.

Q. You mean the western and eastern boundary?

A. Working towards the east.

Q. Have you any idea of the number of cattle that have grazed upon the territory just described by you, of the forest reserve adjacent, during the past year?

A. Have I observed?

Q. Have you any idea of the number of cattle that have grazed upon that territory during the past summer?

A. Oh, I think there is at least twenty-five hundred head of cattle been grazing in that territory.

Q. During the past summer?

A. During the past summer.

Q. Are you familiar with the number of cattle that have for years past been grazing——

A. On that country, yes, sir.

Q. Take about seven years ago, what were the number of cattle grazed upon this identical territory as compared with the present year?

A. Less cattle now, at present, that there was ten years ago.

Q. How many cattle, if you know, have during any one grazing season grazed upon the country described?

A. I think there has been as high as four or five thousand head.

Q. During that period was there any evidence of over-
460 grazing of grass?

A. There was not.

Q. How is the grass upon the range described this year as compared with the former years?

A. It is just as good this year as it has been.

Q. What is the character of the grass upon that range?

A. Blue-stem, bunchgrass, and grass that grows in scrub oak,—or green grass, I don't know the name.

Q. And you have made an examination during the last few days?

A. I have.

Q. What did you find the nature of the grass?

A. Found bunch grass eight or nine inches high, and blue-stem likewise in abundance.

Q. Any evidence of over-grazing?

A. No, sir, not in the least.

Q. What territory have you recently examined?

A. We examined at the lower end of my ranch, or East Sopris on the south side, and crossed over on the north side and went up the hills.

Q. What hill was that?

A. Fred Light hill.

Q. During that examination what, if anything, did you do in reference to looking for trails?

A. We went there—I went there with Mr. Shuttleworth, Mr. Finley and you, Mr. Ward, and we took several trails and followed them off until we come to the end of them,—come back and took another, and there is no continuous trial from my corner there to the forest reserve—never has been.

Q. Is there any continuous trail from any portion of that territory adjacent to your ranch, into the forest reserve?

A. No, sir.

461 Q. There are trails all through that country?

A. There are trails, plenty of them,—follow a trail a little ways and you get a cross-trail.

Q. You heard the testimony on the part of the Government about some bars being down near the corner of Mr. Finley's ranch. Please explain about that western line of your fence?

A. My cattle are kept in the meadow. I have an outside pasture about a quarter of a mile long and a mile and a quarter,—no, half a mile wide and a mile and a quarter long.

Q. To what point north does that extend?

A. North? Just about a quarter below my ranch; and this spring we were hauling fire wood and they went around the meadow, the south end of my meadow land, and went through the fence there a couple of, perhaps three places, I think,—would go up various gulches to get a load of oak, and come down.

Q. How far up would they go?

A. Oh, go half a mile or so from the house.

Q. Is that upon the forest reserve?

A. No, sir.

Q. Was it in the direction of the forest reserve?

A. It was west of the house, the forest reserve is a little southwest.

Q. Now you spoke of your meadow enclosure. Where is the western line of fence for your meadow enclosure?

A. It is about a quarter of a mile from my house west.

Q. Which way does it run?

462 A. Runs north and south, encloses one hundred and sixty acres.

Q. And what is the character of that fence?

A. Three wire and a pole,—a cedar post every fourteen feet.

Q. Did you ever open any gaps in that fence this spring and leave them down?

A. No, sir.

Q. What use did you make of your meadow lands during the months of April and May?

A. In April I fed the cattle there; I turned them out and left that gate open on the east side of a little northeast of my house.

Q. I will hand you Exhibit E. and ask you to mark with ink the letter "S" where that gate is that leads to the northeast.

(Witness marks as requested on Exhibit C.)

Q. I hand you Exhibit J., and ask you to mark with a long ink line the western fence which encloses your meadow lands.

(Witness does as requested)

Q. And how far does that come to the Emma road?

A. Comes to it, or nearly to it.

Q. On the 6th and 8th of May, 1908, when Mr. French and others testified as to seeing the bars near the Finley ranch down and the gaps in your outer western fence, what, if any, openings were there in the western line of fence enclosing your meadow?

A. Why on the 4th of May, I think it was, we had a snow storm, and lots of my cattle came off from that Fred Light hill into the feed lot.

463 Q. Through what place did they come?

A. They came out through this gate.

Q. On which side?

A. On the east and the north of my house, and I closed the fence, closed the gate up and fed the cattle; I closed the gate to keep other strange cattle that I didn't want to feed, that didn't belong to me.

Q. Now answer the question. What openings, if any, were on the west side of your feed lot which you have marked here with ink?

A. There was no opening, hasn't been,—wasn't any opening during the whole spring.

Q. What is the character of that fence?

A. It is a three wire and a pole.

Q. Where is the pole?

A. On top of the wire, fastened to the cedar posts, tight.

Q. The bars that were mentioned,—what is that opening ordinarily used for?

A. That is for the public to go back and forth, and we use it to go and get fire wood.

Q. Back and forth from what portion of the country?
A. From the road to the open range.
Q. In going from the Emma road west, how near does the lane lead by your dwelling house?
A. The lane passes my dwelling house, right in front of it?
Q. And how far from your dwelling house are these bars mentioned?
A. About a half a mile.
464 Q. What has been your experience as to whether those bars are up or down?
A. Why everybody that goes through there leaves them down.
Q. On about the 6th or 7th of May what use, if any, were you making of the western pasture, west of your meadow feed lot?
A. Why in my feed pen I had thoroughbred cattle and beef cattle and milch cows, and a few poor cows.
Q. What number?
A. I think there was twenty or twenty-two in all, and I could not let them out with the herd.
Q. Where is your feed pen?
A. My feed pen is located right at the house, at the barn,—feed yard.
Q. How close to this lane that you mentioned?
A. The lane is right on the—passes right by the corral.
Q. Now proceed to tell what use you made of that pasture?
A. I couldn't turn my cattle out with the herd in the meadow lot to the water, for the fact that it would gin my beef so, it would take flesh off of them, and I allowed them to go on this land and water at the upper end of the ranch, and we allowed them to stay there from eleven o'clock until four or five when they watered and grazed on the pasture, and some days they would go clean across on the upper edge of the fence; I believe they crossed it once or twice and we would get them in very often and feed them.
Q. And how near to the end of these bars would they go?
A. They would go through the bars, I think there was nothing to stop them; when we were hauling wood in the spring they
465 might have gone through the bars a little ways.
Q. At that period of the year what was the condition of the forest reserve as to grass?
A. There was no grass on the forest reserve.
Q. Mr. Light, have you ever during the year 1907 or 8 turned out any of your cattle in the direction of the forest reserve?
A. I have not, no, sir.
Q. Where have you turned your cattle?
A. I have turned them out on the north side and east of my ranch on the Fred Light hill.
Q. At what point marked on Exhibit E?
A. Where the letter "S" is now.
Q. Whose land is immediately outside of that enclosure?
A. My land.
Q. How much land have you there unenclosed and unfenced?
A. I have seventy-five or eighty acres.

Q. Immediately adjoining your land to the north what land is it?
A. To the north?
Q. Yes.
A. Immediately, it is government land.
Q. Unreserved government land?
A. Unreserved government land.
Q. What is the nature of the hillside at the place you turn your cattle out?
A. Why it is rolling?
Q. What is its nature with reference to accessibility?
A. Oh it is easy getting to.
Q. Are there any fences there to interfere?
A. No fences whatsoever.
Q. And that was where you turned them out in the spring of 1907?
A. 1907, yes, sir,—1908 also.
466 Q. The cattle that you turned out in 1908, how many of those constituted a part of your herd that you had in 1907?
A. Why just those thoroughbred I believe I reserved, and I kept them under fence nearly all summer in the pasture.
Q. Where did you get your 1908 herd?
A. I bought from a neighbor by the name of Stauffacher.
Q. And from whom else?
A. From H. M. Shuttleworth.
Q. Where did the bulk of them come from?
A. Mr. Stauffacher.
Q. Mr. Light, what statements have you made, if any, as to your intention to turn your cattle out upon the forest reserve?
A. My intention to turn them on the forest reserve?
Q. Yes.
A. I didn't want my cattle to go on the forest reserve; I never stated that I wanted them to go there.
Q. What efforts have you made to keep them from going on the reserve?
A. Drive them away as far as possible.
Q. You have not, I suppose, herded your cattle?
A. No, sir.
Q. Mr. Light, I hand you Exhibit D. What portion of your farm does that represent?
A. This represents the north end.
Q. That fence crossing the photograph, what fence is that?
A. That is my extreme north pasture fence right here.
Q. Where the willows appear in the foreground what creek is that under those willows?
A. East Sopris Creek.
Q. I hand you Exhibit C. What territory is that?
A. That is the north end of my ranch.
Q. It is the same ground?
A. Nearly the same ground.
467 Q. Just a little bit different view?
A. Yes, sir.

Q. Mark with a pencil the approximate location of your extreme western fence on that Exhibit C.

(Witness marks with a pen as requested.)

Q. Through what character of the country does the extreme westerly fence run?

A. It is through scrub oak—sage brush.

Q. As to the hillside?

A. Oh, it is a gradual slope.

Q. What portion of the hillside is it on?

A. The west hillside from the ranch.

Q. As to being near the top, or near the bottom, which is it?

A. It is at the bottom of the hill, it is just off west of my meadow land.

Q. This is not the fence that enclosed your meadow land?

A. No, sir.

Q. I hand you Exhibit A., which you have identified as being a portion of the Finley ranch. Mark with a pen approximately the fences that run up Sopris Creek,—the western fences.

A. Well, I can not see the fence there, but it is up above here.

Q. You can give the approximate location of the fence, can't you, knowing the location?

A. It runs up the creek south.

Q. Mark on the photograph as nearly as you can about where the fence would be, in your opinion?

A. (Witness marks on photograph) Something like that.

Q. Running over into the forest reserve?

A. Towards the forest reserve.

468 Q. Or running down Sopris Creek?

A. Running up Sopris Creek.

Q. Running up Sopris Creek?

A. Yes.

A. Mr. Light, are you very familiar with the marking of photographs?

A. I don't know.

Q. You have marked here a fence which appears to be about a half a mile from the creek, or a mile from the creek.

A. Well, it is about a half a mile.

Q. How far do these fences continue up Sopris Creek in the direction of the forest reserve?

A. Oh, they continue,—oh, a couple of miles, I should judge, and perhaps two miles.

Q. From what point, from Finley's ranch?

A. From Finley's ranch.

Q. In reference to the territory west of you, where does the grass come out earlier in reference to the territory west and the Light hill?

A. Comes out earlier on the Light hill.

Q. For what reason?

A. South exposure, and grass springs up there; we hardly ever have any snow on that hill.

Q. How long has it been your custom to utilize the Light hill?

A. It has always been my custom since I have been there in business.

Q. What period of years?

A. Twenty-eight years.

Q. At what time?

A. I generally turn out in April.

Q. Why do you turn out there so early as April?

A. It is an early side hill, that is all,—to avoid feeding hay.

Q. What is the condition of the grass throughout the forest reserve at that time?

469 A. Oh, it is covered with snow, the forest reserve is, at that time.

Q. And was that your practice before the forest reserve was established?

A. It was.

Q. Prior to the establishment of the forest reserve what practice, if any, did you have in reference to handling your cattle later in the summer?

A. Why the cattle came down there and wintered partly on this hill?

Q. You say later in the summer?

A. Yes.

Q. What did you do with your cattle?

A. They drifted down on this hill and grazed there.

Q. What, if anything, have you done in reference to driving your cattle upon the higher lands?

A. In former years we used to—neighbors used to get together and take the whole bunch of cattle up there on what is now known as the forest reserve, to save the lower range for winter feed and late fall feed.

Q. Would the cattle stay there?

A. Oh, we have driven them; they would come down and we would drive them back.

Q. Have you changed your method of handling your cattle as to turning them out in the spring, since the establishment of the reserve?

A. No, I turn them out at the north end of my ranch—north and east of my house, on the Light hill, but I don't drive them up toward the forest reserve any more.

Q. What is the character, or topography of the Light hill as to accessibility?

A. Oh it is an easy hill to graze, it is rolling.

470 Q. Is it difficult for other purposes?

A. No.

Q. What, if anything, do you know of wagons being upon that hill?

A. You can haul a wagon anywhere upon it,—haul cedar posts upon it.

Q. Where may cattle, and where do your cattle graze and drift from the Light hill?

A. They drift everywhere towards Aspen and towards Carbondale. These cattle that I turned out last spring drifted in the Crown; most of them are in the Crown now.

Q. What is the character of the ridge immediately west of your ranch lying between your ranch and the forest reserve, as to the growth upon it?

A. West?

Q. Yes, west of your ranch.

A. Why the grass is good west of the ranch.

Q. As to the timber growth?

A. There is no timber west of my ranch.

Q. Is there any kind of growth there otherwise than grass?

A. Oh, there is scrub oak there.

Q. What is the nature of the scrub oak?

A. Oh the scrub oak grows in clumps here and there.

Q. What is the character of that, as to whether it would be easy for cattle to pass up over those hills into the forest reserve in that direction?

A. Why, cattle turned on the Light hill, as they go to water they would naturally drift toward the Crown or towards Emma, down the creek.

Q. What is to prevent them from going in a direct southwesterly direction into the forest reserve?

471 A. There is a cliff there, there is a little steep hill and they get under this rim and they drift down the river.

Q. What is the character of the country between your northwest corner and the northeast corner of the forest reserve?

A. Northeast corner——

Q. I hand you Exhibit A., attached to the answer, and ask as to the character of the country between the northwest corner of your ranch and the northeast corner of the forest reserve?

A. What is the character?

Q. What kind of land is there lying between there?

A. Why the cattle——

Q. What kind of land, I mean?

A. Oh, kind of rolling, good grazing land.

Q. How many ridges are there in between that and the forest reserve?

A. There is this rim that goes west there at the lower end of the place; there is ridges there once in awhile.

Q. Some of the cattle have drifted upon the forest reserve?

A. I never saw any, Mr. Ward.

Q. You have been informed they have been there, have you?

A. Yes, sir.

Q. Is it your intention that they should go there?

A. No, sir.

Q. In going there the way the cattle ordinarily travel, how far would they have to travel from your northeastern gate to get upon the forest reserve?

A. Well, of course if they got behind the fence, happened
472 to go behind the fence, they would reach the reserve I guess in five miles, or four and a half. If they drifted below this ridge they would have to travel about nine miles to reach it.

Q. What is to prevent them from going right straight across in a straight line?

A. They don't—well, this rim has a tendency to throw them below.

Q. Has the nature of the scrub oak and brush anything to do with it?

A. Oh, es, there is a ridge there that they don't see the grass; they don't like to graze and they drift down the river and they come to what is known as "Middle Soper," and I presume some of them drift up Middle Soper.

Q. What is the nature of the grass on these high ridges in the months of April and May?

A. Why, there ain't much grass on them.

Q. Would that have any tendency to attract the cattle away?

A. No. On the ridges you mean?

Q. Between your corner and the forest reserve.

A. There is nothing there that I can see that would induce the cattle to go towards the forest reserve.

Q. As a matter of fact, from your twenty-eight years' experience in that country, how do the cattle go from your northwest corner over towards what is known as the forest reserve; what direction do they take, as you have described?

A. A few of them I presume goes up Sopris, and the
473 others drift down to Middle Soper and go up it, and some drifts further and get on West Soper and get on the reserve.

Q. Mr. Light, you have refused to take out a permit to graze your cattle?

A. Yes, sir.

Q. Why have you done so?

A. Why, I believe it is unjust, unconstitutional: I believe that it is taking a right away from us that they give all the people of other states, and believing as I do I could not take out a permit.

Q. Are there any other motives which induce you to refuse to take out a permit?

A. The farmers and stock men of that locality got together and held meetings, and we signed an agreement not to take out a permit.

Q. With what end in view?

A. In order that we might get a decision from the court on the subject, believing they had no authority to levy a tax on the people. Our meeting was to the effect that we should aim to get a hearing before some court, and get a decision authorizing the Government to make this collection.

Q. And what was determined upon by you cattle men in the event that the Government should win its contentions?

A. Well, we agreed to pay as soon as they could get a decision in their favor,—willing to pay, but not until then.

Q. Mr. Light, I hand you a copy of the answer, to which is attached a plat marked "Exhibit A." Have you examined that plat as to the section numbers?

A. I have.

474 Q. And the location of your ranch?

A. Yes, sir.

Q. And the dotted lines marked as fences?

A. Are correct.

Q. And the general course marking East Sopris creek—how is that?

A. That is perfectly correct.

Q. So that the map as attached to the answer gives an approximately correct statement of the situation there?

A. Yes, sir.

Q. You spoke of being willing to pay the fees in case the Government should—in case the court should decide that the Government should enforce the rule for herding cattle in conflict with the State laws. What is the extent of your cattle business at the present time?

A. Why, I control one hundred and seventy-five head.

Q. How does this compare with your former herds?

A. It is not one-fourth of what I have been running.

Q. What reason have you for cutting the herd down to the present number?

A. I don't know how this is going to turn out, and it might be denied the privilege of ever using the range around there.

Q. And what effect, if any, does the strict enforcement of the present rules and regulations have upon your cattle business?

A. It has great effect.

Q. In what particular, financial or otherwise?

Mr. KNAEBEL: It will be understood that all of this line of testimony goes in under objection. I don't want to encumber the record.

475 Mr. WARD: That is all right.

Q. Explain.

A. Why if the Government is going to arrest us every time a cow crosses over on to the forest reserve we had better get out of the business.

Q. Why not herd your cattle?

A. We cannot herd cattle there and make a success of the business.

Q. Why not fence your lands?

A. Fence our lands?

Q. Yes, sir.

A. We cannot fence them—don't own any land that will support any great amount of cattle.

Q. Where must the cattle run in order to——

A. Must run on the public domain.

Q. Where they have been running right along?

A. Where they have been running for years past.

Q. Mr. Light, what is the condition of the cattle now upon the public range in the neighborhood of your ranch?

A. In good condition.

Q. What effect, if any does the placing of salt upon the higher portions of the forest reserve have, in getting cattle to that territory?

A. The object of putting salt high, I presume, is to hold the cattle up there.

Q. What effect, if any, has it upon your cattle straying upon the forest reserve?

A. I presume they go there, some of them, on account of the salt.

Q. What effect would it have in inducing them to remain
476 there?

A. It would hold them there like other cattle.

Q. What is the result of large numbers of cattle being driven upon the forest reserve through the territory where your cattle are?

A. Why, the result has been up there in a certain place, that where cattle were driven away back high, they eat a good deal of salt, and eat all the grass around there, and still stay there and eat piñon wood; I know of one place sixteen or seventeen head of dead cattle within the space of a quarter of a mile; and if the salt was put low, why they would simply go up there to get grass and come back, and wouldn't be compelled to eat that poison wood.

Q. Well, why do not your cattle stay on the Light hill?

A. The cattle drifts in all directions; I don't think that you can keep cattle, unless you herd them, anywhere.

Q. The fact that your cattle are reported to have been found upon the forest reserve, is that due solely, in your opinion, to the drifting tendencies of the cattle?

A. Yes sir.

Q. Have you driven them up there?

A. No, sir.

Q. Has anyone else driven them up there?

A. No, sir, not to my knowledge.

Q. To your knowledge?

A. No, sir.

Q. Does the fact that large herds have been driven up there in the same territory with your cattle have any effect upon your cattle?

A. Yes, I presume when they drove the herds back that they took some of mine with them.

477 Q. But you don't know of your own knowledge?

A. No, I didn't see them.

Cross-examination.

By Mr. KNAEBEL:

Q. What precautions have you ever taken to prevent the cattle from going upon the reserve?

A. Why, I have told my riders to be sure not to allow any of

them to go there, if they saw them to turn them in the opposite direction from the reserve.

Q. To whom did you tell that?

A. Oh, my boy that works for me.

Q. What is his name?

A. Leo.

Q. When did you tell him?

A. Oh, various times.

Q. What year?

A. 1907 and '8.

Q. Sure you told him in 1907, are you?

A. Yes, sir.

Q. And this year again?

A. Yes, sir.

Q. Why did you not remove the cattle from the reserve when Mr. French notified you last year?

A. I agreed with him that he should give me ten days, and we entered into an agreement with the Government that we should have a test suit,—wasn't compelled to take them off.

Q. You knew that they were up there this year, didn't you?

A. Very few, Mr. Knaebel,—very few.

Q. You knew there were some of your cattle upon the reserve this year?

A. Personally, no; I was told there were very few.

Q. You testified that this case is one that you are acting as
478 a defendant in for the purpose of testing the question whether you are under any obligation, or your neighbors are under any obligation to take precautions to keep their cattle off of this reserve, when they haven't secured permits; is that correct?

A. Well, we are testing the legality of the fact whether they have the right to collect a fee. That is my understanding of it.

Q. What is your position now, that you have a right to have your cattle upon the reserve?

A. Well, no, my position is that I don't want to pay the fee.

Q. Well, can you give us some idea of what your standing now is, and your attitude, as to whether you believe you have a right to have your cattle on that reserve if they go there, without having had any permit?

A. Well, I know that if I drove them on the reserve that it would be just like driving them into a man's enclosure, that I would be doing something I hadn't ought to do, I know that; but there is good grass outside of the reserve, and I would just as lief, and rather, they would remain outside.

Q. You used to drive your cattle upon this reservation before any restrictions were imposed by the government, didn't you?

A. Yes, sir.

Q. And you also salted up there in years past?

A. Well, I don't think we put salt in the reserve very much.

Q. Well, now, what is the fact about that?

A. We did put salt up at the Hay Park, but that is the
479 only place; I presume that is in the reserve.

Q. Those cattle that you owned last year, and which were

mentioned in the bill of complaint as it first was filed, were cattle that had been in that reserve for a number of years past, were they not?

A. No, sir, they were a new bunch of cattle bought from up towards Aspen, known as the "Stapleton" cattle and "St. Clair" cattle.

Q. Did you not state in Denver in Mr. Ward's office in my presence last spring that a portion of that herd were cattle that had been there and acquired the habit of going upon that reservation?

A. I don't remember of making such a statement.

Q. Now you read the original bill of complaint in this case, didn't you, after it was filed?

A. Yes, sir.

Q. Before it was filed?

A. Well, I read it as soon as Mr. Ward sent it to me, yes, sir.

Q. And you agreed and assented to its terms as stating the fact—excepting the adjectives and adverbs, descriptive of your intention?

A. Yes, sir.

Q. And after the demurrer was overruled by the court you filed an answer which you verified and swore to, which is in very material respects different from the statement of facts which was agreed upon; is that correct?

A. There was no statement of facts agreed upon, was there, Mr. Knaebel?

Q. I am asking you; I certainly thought there was?

A. You say you thought there was?

480 Q. I am asking you, now, you are testifying.

A. That was all our trouble; if we had agreed to the statement of facts we would have had a hearing long ago.

Q. Was there anything in that complaint, Mr. Light, that you made an objection to, before it was filed?

A. Why yes, they accused me of causing my cattle to go on the reserve, and I didn't; of course I objected to it.

Q. Didn't you admit that you caused them, in the sense that you turned them loose, when you knew they would go there because of the conditions of grazing and water, and topography, and habits of the cattle?

A. I didn't agree that I caused them to go there.

Q. Didn't you agree that you caused them to go there in that way, and to that extent?

A. I didn't understand it that way, Mr. Knaebel.

Q. Now you are not standing the expense of this defense, are you?

A. Not alone.

Q. Who is standing it?

A. Why, the stock men of the state.

Q. What do you mean by that; what stock men?

A. The Association.

Q. What is the name of the Association?

A. Why, the State Stock Association, the local Association are going to contribute towards defraying the expenses.

Q. You don't want to have it understood, do you, that that Association, in the defense of this suit, represents the views of all of

the big stock men in the state on this question of forest reserve?

481 A. Not all, but a majority of the stock men of the state.

Q. You say that your objection is to the fee. The fee is how much?

A. Twenty-five cents per head.

Q. Is that your only objection?

A. Well those rules I couldn't conform with.

Q. And did you testify—I don't want to misconstrue you, but did you say that the payment of the fee would result in depriving you of all the profits of the business?

A. Oh no. All the profits?

Q. Yes.

A. No, it is an additional hardship, I said.

Q. You don't mean to say, then, that the fee of twenty-five cents a head would drive you out of the stock business?

A. No, it with the rules make it so bunglesome that I would rather be out of it, be in something else.

Q. What rules do you refer to?

A. The rules that it is necessary for us to keep our cattle off the reserve, or keep them in a specified space; we could not do that.

Q. Have you ever been requested?

A. No, but the rule says "if necessary"; we would have to conform by the rule.

Q. So that it is your fear of the hereafter again, as was testified by another witness, that induces you to defend this case, is it; it is not the fee so much as the thought that you might in the future be compelled to do something that you couldn't well comply with; is that the idea?

A. Yes, that is part of the idea.

Q. Now you don't claim any ownership in any of the lands

482 within this reservation, do you?

A. Only as a citizen.

Q. The same ownership that I have, or that Senator Ammons or Mr. Ward has?

A. Why I presume so; only that I live adjacent, I believe I have a little better right than those that live away off.

Q. When those cattle go into the reserve they go upon land owned by the United States, don't they?

A. Yes, sir.

Q. No controversy about that, is there?

A. No, sir.

Q. In 1907 did you drive any of your cattle upon the reserve?

A. No, sir.

Q. Yet a large number went there, didn't they?

A. 1907? Why Mr. French told me he counted one hundred and nine, that is all I know; we didn't gather them off from there, though, when we gathered them they were off the reserve.

Q. You knew they were on the reserve in 1907, didn't you?

A. I didn't see them there; Mr. French told me and I presume he told me the truth.

Q. When you turned them out you knew they had been there in previous years?

A. They had not been there in previous years.

Q. None of them?

A. Very few; I had a very few cattle and they were blooded stuff that I kept over.

Q. In 1907, I am talking of?

A. 1907, yes; and these were cattle that I bought, that came from other sections, and when they were gathered in the fall they were gathered close to Aspen, most of them,—at least one hundred and fifty of them.

483 Q. Didn't you know, as a matter of fact, that cattle of that entire neighborhood had not fed, not gone up into this reservation?

A. Cattle of the neighborhood?

Q. Yes, sir.

A. They go there a little, Mr. Knaebel.

Q. You say "a little", what do you mean by that?

A. Why I think that some of them drifts up there of course, but not over—I don't think over ten per cent. of them drifts on the reserve, that is, the entire season.

Q. Well, let us eliminate the entire season, and so find out what percentage go up there at any time in the season?

A. Well, there is sometimes during the season quite a number up there, but they drift every direction, east and west, north and south.

Q. You have heard what the witnesses have testified here today about the preference of cattle for fresh grass, and for places where they can get water readily without going far for it?

A. Yes, sir.

Q. Now, then, what do you say about the tendency of cattle to drift from that lower country, to go from that lower country up into the reservation as the season gets hotter and the grasses down below begin to dry up?

A. We have no hot season up in the high altitudes; all of that country in there is high, we have no warm weather, unreserved or reserved.

484 Q. Then, in your opinion, the cattle don't go there, they stay around on the lower range?

A. Some of them do and some do — go up there on the reserve.

Q. What did you mean by implying that every time a man's cow might get over the line that he would be arrested? Did you ever hear of anybody being arrested under those circumstances, by the Government officials?

A. Why I know that they got a complaint against Mr. Zimmerman and against Mr. Luxum—Joe Luxum; they were going to have five or six at least in the White River country; that is what I mean that if our stuff goes on the reserve we shall be prosecuted for it.

Q. Not arrested in this case?

A. I was notified to take my cattle off, and I guess we would have been if they hadn't agreed to give me a test case.

Q. Do you know the difference between a criminal and a civil suit?

A. Yes, sir.

Q. What makes you think that Zimmerman was ever prosecuted with a warrant if there was any likelihood of his arrest?

A. Oh, well, but didn't they have a complaint, haven't they sued him for damage, for trespassing upon the reserve, or wasn't that until recently they were going to keep the suit back until this case was determined.

Q. You are very positive in your answer that your cattle each year drifted toward Aspen and Carbondale from Light hill. Now what have you got to say about the direction of the forest reserve?

A. Why there were a few that drifted on the forest reserve.

485 Q. You drove your cattle up there in 1906, didn't you?

A. Yes, sir.

Q. You drove them up there every year before that, for a great many years?

A. Yes, sir.

Q. You spoke about a snow storm last May which caused your cattle to get over the Light hill district, or country around to the west side of your ranch?

A. They came through the gate on the north and east side of my ranch.

Q. And got around to the west side, didn't they?

A. No, sir.

Q. None of them?

A. Only those that I had inside of the pen that went to water and got in there a little, those were put in there very often.

Q. How did your cattle get on the reservation this year?

A. I don't think there was but very few on the reservation this year.

Q. Those that got there, how did they get there?

A. Well, perhaps they went up Middle Soper; I don't know as any got there, myself, this year—I didn't see a one.

Q. Did you look?

A. I was up there.

Q. Did you look?

A. Yes, sir.

Q. Did you go there for that purpose?

A. Yes, sir.

Q. Did you go there for the purpose of bringing them back if they were there?

A. I would have, yes, sir. I would have taken them home.

486 Q. You are not a very good champion of the rights of the people, are you, if you would do that, when you are sitting in this case to test the right of the Government to restrict the grazing of non-licensed cattle up there, and you are contending for the application of a state fence law? I don't quite understand what your attitude is, Mr. Light. In one breath you say this is all unconstitutional, and that you are going to stick them out, you are backed by a Stock Association, you represent the majority of our

stock men, and in another you say it is your purpose and desire to prevent your stock from going up there, that you have got directions to that end, and expressly go on the reserve for the purpose of driving your cattle back. Now please explain what your attitude is for the future in regard to this matter?

A. Well, I know that if I drive my cattle in your field that you have got recourse; I know if they got there of their own accord why you have no recourse, and I don't want my cattle to go upon the reserve with my consent.

Q. You say that if the Government's contention is sustained in this suit you will take out a permit. Did you testify to that effect?

A. Yes, sir, I did.

Q. Suppose the range of the forest reserve were fenced in, would you take out a permit then?

A. No, I would not take out a permit if it was fenced.

Q. Didn't you state to me in the presence of Mr. Ward
487 in his office last spring, or early in June, that you would be very glad to take out a permit?

A. To put inside of the fence?

Q. Yes, sir.

A. Oh yes, if you should grant me that, if I had the exclusive use of that forest of course I would be willing to pay something for it, yes.

Q. How far did you drive your cattle in 1908 when you turned them out?

A. Why, I just opened the gate and they went on the hill.

Q. Just as you have done every year before?

A. Yes, sir.

Q. One more question. What was your object in past years in driving your cattle upon what is now the reserve?

A. So as to protect the lower feed, so that our cattle would stay out longer in the fall.

Redirect examination.

By Mr. WARD:

Q. Mr. Light, Mr. Knaebel has recalled to your attention a conversation had in my office last spring preliminary to Mr. Knaebel's preparing the complaint. You recollect that conversation?

A. Yes, sir.

Q. When did you see, if at all, a copy of the complaint prepared by Mr. Knaebel after that?

A. I didn't see it.

Q. When did you first see it if you recollect,—the complaint?

A. I think when——

Q. Do you remember when you first saw that complaint, or any draft of it?

A. Why, after you sent it to me. You sent me this,
488 didn't you?

Q. Was that after it had been filed, or before the suit had been brought?

A. I think it was after.

Q. Did you ever have a conversation with me or Mr. Knaebel after the time of that first conversation with Mr. Knaebel?
A. With you and Mr. Knaebel?
Q. Did you ever have a conversation with either me or Mr. Knaebel up to the time of the filing of this complaint?
A. I don't think so.
Q. Did you communicate with me as to the contents of the complaint from the time of that conversation until after it was filed?
A. No.
Q. Did you know what was in the complaint prior to its being filed?
A. No.

Recross-examination.

By Mr. KNAEBEL:

Q. Did you not agree with the meeting I refer to, and hadn't you agreed previously to that time with the representatives of the Department of Justice that it was true that when you turned your cattle loose last year in 1907, you knew that a proportion of those would go upon the reservation?
A. Well, I know that cattle some of them do go there on the reserve.

Redirect examination.

By Mr. WARD:

489 Q. Did you agree with the Department of Justice or anybody else that your cattle would go upon the forest reserve?
A. No, sir.
Q. Is it a fact?
A. No, sir.
Q. At any time?
A. No, sir.
Q. You spoke about threats of arrest, in cross-examination?
A. Yes, sir.
Q. Have any citizens of Colorado been arrested for letting cattle go upon the forest reserve?
A. I understand that there was.
Q. Who?
A. Andrew Norrell, for one.
Q. Where does he live?
A. North Park, I believe.
Q. Were any threats of any character made to you by officers of the Forestry Department in connection with your refusal to pay the grazing fees and taking out permits?
A. Why Mr. French told me if I didn't take them off or pay the fee that I would be reported as a trespasser and suffer the consequences.

Recróss-examination.

By Mr. KNAEBEL:

Q. You don't know the facts of the Norrell case, do you?

A. I know that I had a talk with Norrell; I know that he read the paper that he had been hounded by the Government or somebody else having trouble with them.

E. M. AMMONS, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

490 Q. What is your full name, Mr. Ammons?

A. E. M. Ammons.

Q. Where do you live, Mr. Ammons?

A. I live in Douglas County.

Q. How long have you lived in the state of Colorado?

A. Something more than thirty-seven years.

Q. Were you born here?

A. No, sir.

Q. In what portions of Colorado have you lived, Mr. Ammons?

A. I have lived in Jefferson and Arapahoe and Douglas; I have lived in——

Q. Have you lived in mountains as well as plains?

A. Nearly all the time, most of the time I have been in the mountains.

Q. What is your business, Mr. Ammons?

A. I am a stockman.

Q. How long have you been in the stock business?

A. Continuously about twenty-four years.

Q. How large a herd of cattle have you handled from year to year?

A. I have had several bunches, as a rule,—got less now than I have had for a good many years; have had as high as four thousand head at one time.

Q. In what portions of the state have you run these cattle?

A. Douglas, Jefferson, Park and Teller counties.

Q. In what portions of the state in what character of country in reference to being timber covered, or mountainous, or prairie?

A. All the cattle I have had on prairie has been in pasture?

Q. And you have, you said, handled cattle in the timber region?

A. Yes, sir, mostly.

491 Q. Mountains also?

A. Yes, sir.

Q. What official position in reference to Stock Associations have you held or do you hold?

A. Why, I am simply a member of the State Association, belonging to some of the committees. I have been President of the State Association, and several local Associations. I am with the Stock Show Association,——

Q. What——

A. I am President of that at the present time.

Q. What attention, if any have you paid in reference to the grazing matters in the state.

A. I have been connected with this controversy as a member of the local or State Association since the first reserve was taken possession by the old South Platte Reservation on Plum Creek, and it is now combined as a part of the Pike's Peak Reserve.

Q. What missions, if any, have you undertaken in reference to these matters, to Washington?

A. I was a member of the committee that went down to take an appeal from the Forester, before the Secretary of Agriculture and before the President.

Q. What official positions have you held in the state of Colorado in your county?

A. I am Clerk of the District Court, have been a member of both houses of the legislature—was Speaker of the House.

Q. What positions have you held within your county other than what you have narrated?

A. Only Clerk of the District Court; I never have been a candidate for anything else.

492 Q. What study, if any, have you made in reference to forestry matters?

A. I have taken an interest in that ever since I was old enough—ever since the reserves were established, I have—as I say I have been somewhat connected with our local Association and members of it, in the controversy over the rules and regulations, and have paid what attention, and learned what I could about the matter; I have always taken an interest in the preservation of the forest all my life. I think I am one of the very first ones who ever attempted to get the forests at the head of the Platte river protected from destruction.

Q. Has your interest led you to make any investigations or study on the subject?

A. Yes, sir.

Q. To what extent?

A. Well, to what extent I was able to, with what reading I could do, and what investigations and inquiries I could make.

Q. What opportunities have you had to observe forests throughout the state?

A. I have been riding the range there nearly all my life, and I have learned what I could from observation of natural conditions and circumstances.

Q. You have had this matter in view for years, have you?

A. Yes, sir.

Q. And made a study of it?

A. Yes, sir, I think it is a very important matter in this western country.

493 Q. Have you made any investigation or study, outside of the state of Colorado, of forest conditions?

A. Only in one place in New Mexico.

Q. Have you had any experience with forest fires in Colorado?

A. Yes, sir.

Q. Please explain the conditions that make forest fires more frequent?

A. Well, it has been my——

Mr. KNAEBEL: Objected to as immaterial.

(Witness continuing:) —experience that a great many of our forest fires have been caused by lightning in the early day when the grass wasn't eaten off, and there were accumulations of years of dry matter; in a dry time when a fire started it was almost utterly impossible to stop it because it would go from one patch of timber to another,—couldn't head it off.

Q. What effect does the grazing of cattle have for the protection of the forest against fires?

A. I think it is the best protection; the grazing of livestock is probably the best natural protection that we have.

Q. What, if any, experience on that line did you have outside of Colorado?

A. In the west of Embudo on the Rio Grande there are some large tracts of timber on which I made a report some five or six years ago, and in going over those lands I saw a number of fires in the forest, the best timber I have ever seen in this western
494 country, and they wouldn't spread anywhere, and upon investigation I discovered there was nothing to carry any fire along, they had been pasturing sheep in there, they informed me, a hundred years—finest timber I have ever seen in my life.

Q. Are you familiar with the rules and regulations of the forest service?

A. Pretty well so; I don't know how much they have been changed this year; I have looked them over but not very carefully; they are somewhat changed, I believe, from a year ago.

Q. Have you made any special study of the rules and regulations of former years?

A. Yes, sir.

Q. Have you discussed these rules and regulations with Government officials?

A. Yes, sir.

Q. With whom?

A. With every supervisor, I think, unless it is the very last ones that have been in charge of the reservation, now the one reservation—Pike's Peak, and with others,—with Mr. Pinchot and Mr. Potter; with Mr. Barnes and with the President and with Secretary Wilson.

Q. What effect upon the forest has the enforcement of these rules and regulations had, as to the protection of the forest?

Mr. KNAEBEL: That is objected to as calling for the conclusion of the witness concerning a matter that he is not shown to be competent to testify about; and secondly, because it is immaterial to any issue in the case.

A. I don't consider that the rules in the reservation in which I am acquainted—I am not personally acquainted in all of
495 them—have assisted very materially in the protection of the forests.

Q. What effect have these rules had upon the grazing in the forests?

A. They have put them under a course,—a different system from what it was before, but take it in our reservation the conditions there in the last three or four years have been worse than they were ever since I can recollect.

Q. What has been your observation in reference to whether or not cattle grazing in the forest, injure the forest?

A. They do not; I never in all my life have but one time seen cattle eating pine or spruce buds; I recollect one winter, in the hard winter of '85 out on the divide seeing two or three head of cattle reaching up—saw cattle nibbling at the pine leaves. I have never seen where cattle destroyed the undergrowth of pine or spruce.

Q. What effect would over-grazing of a forest have,—cause an injury to the re-forestration?

A. Well, as to the re-forestration I think it is an open question of how to start trees; I don't believe anybody knows. I know of one instance, and we tried to get some of the forest officials to go there and look at it, on the Floyd Hill road, one of the oldest roads in Colorado, going from Denver and Idaho Springs to Georgetown, I found where that road has been changed years ago, and in the roadway, and not on either side, it has grown up as thick with pines, as thick there as they can grow; whereas, on either side there is no growth whatever, nothing growing, nothing coming up,—just in the
496 roadway where it was tramped. It is a matter that I have heard a great many remark about. I was over there this summer; I go over nearly every year. I think it is an utter impossibility for anybody to say certainly what is the best condition to get a growth of trees started. I know from observation that trees don't start very readily where there is a sod grass; I have noticed that all my life here in my travels when I was over the mountains. I don't think any one yet knows how is the best way to start trees a growing in this country where fires have occurred. When I was a boy, trees now probably that high (indicating) started reforestration, some a little higher, some places they are not yet thick enough; some places they are too thick. A great deal depends, I think, on how much stuff there was in the ground and how dry it was when the fire occurred, because there are instances I have seen myself where every particle of the soil was burned up, and that this started very slowly, and I know there is very little change in thirty-seven years; in one or two places in that county it has occur-ed; it looks as though it couldn't have been over two or three years' growth; there is very little change that has occurred in all that time in the growth.

Q. What effect as to fires would the close grazing of the forest range have?

A. Well, close grazing of the forest reserves would assist in protecting the forests against fires.

Q. And the same sort of grazing, what effect would that have upon the reforestration, or the young growth.

497 A. I don't think anyone can tell yet.

Q. What is your opinion?

A. I am very much in doubt about it; it certainly won't hurt any growth there is there; whether it will benefit, or whether it will promote it or not, I don't know.

Q. What has been the general condition of the cattle business for the past five years as to whether or not it is profitable?

A. It has not been profitable the last five years.

Mr. KNAEBEL: I want to make objection to that question, and to all questions along that line, on the ground that they have no legitimate bearing upon any issue in this case.

Q. The fact that the cattle business has not been profitable, would that bear any weight in the question of grazing permits, and rules and regulations, and herding cattle?

A. Certainly, every restriction you place upon cattle why it has that much more of an adverse effect,—more discouragement.

Q. What would be the effect upon cattle business in the vicinity of forest reservations *of* there should be a strict enforcement of the rules and regulations?

A. It would be very detrimental.

Mr. KNAEBEL: Objected to on the same ground.

Q. What effect, if any, have you noticed?

A. Well, I have noticed herds being reduced and men going out of business, and loath to go into business, and unable to raise money to go into business. A great deal of cattle business in Colorado is done on borrowed capital. In order to raise money to buy
498 cattle, a man must show that he has a place to take care of them during the period which they allow him to hold those cattle, and they must be assured of that during that time.

Q. Well, are they not assured of that under the permits allowed?

A. No, sir, they have been issued only for a year. I understand they are issuing them now for a longer time, but the terms of the permit are such that if the forest officers wish to do so they can revoke them at any time. The rules and regulations as applied to the reserve for which I did business for them was utterly impossible for any man to live up to—I don't know, in some of the other reservations it may be possible—and they wouldn't change them, no difference how many conferences we had, we were unable to get those rules changed so that it was possible to live up to them; and every application that we signed we agreed that if we violated any of those rules that our permit was revokable at any time.

Mr. KNAEBEL: I move to strike out the answer, and I object once more to any further pursuit of this line of inquiry as immaterial, as raising questions of policy of an administrative character which have no place in a judicial proceeding; and, as a further ground of striking out the answer I base the objection upon the proposition that it is too vague and indefinite; it amounts to a general condemnation of the entire body of the rules and regulations, without any specifications, and without stating any reason for the conclusions derived.

Q. Senator Ammons, I hand you Defendant's Exhibit H.

499 (Witness examines Exhibit H.)

Q. I read you from Defendant's Exhibit H, in blank introduced into evidence, and ask you to specify what portions are objectionable, and, in your opinion detrimental to the cattle business in Colorado in the vicinity of the forest reserve?

Mr. KNAEBEL: Objected to as incompetent.

Counsel for defendant reads Exhibit H. as follows:

I also hereby bind myself and my employees engaged in caring for the animals while on the forest to extinguish all camp fires started by myself or any of my employees before leaving the vicinity thereof, and to render all reasonable aid in extinguishing forest fires within the district in which the stock is grazed.

I also hereby agree that I will allow my stock to graze only upon the areas specified in the permit, and that I will obey and support all the laws and regulations governing National Forests.

I also agree to forfeit the permit whenever the National Forest for any reason ceases to exist, or for a violation of the National Forest regulations now or hereafter adopted or of any of the terms hereof, or whenever an injury is being done to the Forest by reason of the presence of the animals therein.

A. The last reason there is good; the balance of that exhibit, I think that every man—I think there never has been an objection to assisting in putting out fires. From a practical standpoint I think it would be very detrimental to attempt to enforce that about specifying certain locations; for instance, if I am given a certain location now in the reservation I might be able to take in the yearlings that had not run in that neighborhood before and get them located in that place this year; if next year I should be ordered to move these across the hill, or over on the next creek, it
500 would be impossible for me to hold them there unless I kept them constantly herded, they would tramp back and forth and they would be dying off and become sore-footed and would not thrive. Cattle will go back to their old range if they can get there; I have had cattle go over a hundred miles.

Q. Now, Senator Ammons, I read you from Defendant's Exhibit G., the same being a blank form of the grazing permit issued by the Department.

A. Another thing I wanted to speak of, this question of agreeing to rules hereafter made. I don't think that is reasonable at all; I don't think any business man will agree that there is any reason whatever in that rule,—agree to something that may be a rule that may be made tomorrow. These rules are changeable; they are not like a law passed by congress and legislature; a forester can change those rules any time he likes, through the Secretary of Agriculture,—I suppose I should use that term. If I agree to keep some rule that I don't know what it is, I don't think that is reasonable at all, and everybody objects to that rule in there that I ever talked to.

Mr. KNAEBEL: Counsel for complainant moves that the answer

be stricken, as incompetent evidence in this case, and as attempting to speak for the whole community, and an individual opinion of the witness.

WITNESS: No, I don't. If my language leads to that I will change it; I am speaking for myself in that.

501 Q. Senator Ammons, I read you from Defendant's Exhibit G., the same being a blank form of a grazing permit, and request you to listen, and call attention to what you say are the objectionable parts thereto:

Mr. —— —— of —— * * * is hereby authorized to pasture the following number and class of live stock * * * upon public lands within the —— National Forest * * * Provided, That the animals shall not intrude upon any area upon which grazing is prohibited, or upon any portion of the National Forest except the following described area: * * *

This permit is issued on the condition that said —— has * * * agreed to comply fully with all National Forest rules and regulations now or hereafter adopted.

This permit is issued with no obligation or agreement on the part of the Government to maintain an exclusive possession upon any part of said forest to any one person or firm, nor as to adjustment of any conflict as to possession.

For violation of any of the terms of the application on which it is based, or whenever any injury is being done the forest by reason of the presence of the animals therein, this permit will be cancelled and the animals will be removed from the Forest.

Mr. KNAEBEL: I want to make the same objection that I made before to the question propounded, upon the ground that it is incompetent to ask the opinion of this witness as to reasonability or otherwise of this rule, and that such testimony has no tendency whatever to support or overthrow any contention legitimately embraced within this inquiry.

A. The same objection as there was in the other. The additional one I want to mention is that the permittee, as he is called by the Service, has no right that he can enforce anywhere.

502 Q. You spoke a minute ago of the financial difficulties connected with raising cattle. Please explain more fully.

Mr. KNAEBEL: That is objected to as incompetent.

A. As I have explained, a large amount of the operations in Colorado are on borrowed capital, and people experience a great deal of difficulty in securing money for the purpose when they can not assure the lender that he will be protected in grazing their cattle during the period for which the loan is made.

Q. I read Regulation 47, set out in the bill of complaint, being in the use book of 1907, as follows:

Persons owning cattle and horses which regularly graze on ranges located along the boundary line and only partially included within a National Forest may be granted permits for such portion of their stock as the circumstances appear to justify, but may be required to

herd or so handle their stock as to prevent trespassing by that portion for which a permit is not granted, and to sign a supplemental agreement to that effect.

Q. What, in your opinion, is unreasonable in such regulation, or does not tend to the protection of the forest?

Mr. KNAEBEL: Objected to for the reasons last assigned.

A. The first part of that I have seen no objection to, that there may be an arrangement made for the payment of part of them; but I object to the part that would require a man to herd his cattle off the reservation. I think they ought to fence it if they want to keep them off.

503 Q. As a practical cattle man, would a herd that has been raised in a certain locality—if a permit is granted for half of them what will become of the other half?

A. The other half will drift back where they have always run unless somebody herds them off, probably, unless it might be a few strays.

Q. Have a herd of cattle any tendency to stay together?

A. No, sir, not very much, where they are kept together they will, but they will keep breaking up when they come in contact with other cattle, especially the younger ones will follow off where the other cattle are; they seem to have their cronies like people; there is no accounting for them.

Cross-examination.

By Mr. KNAEBEL:

Q. Have you made any special study, Senator, of the subject of reforestration?

A. Not a great deal, no, sir; only from what little I have been able to see; I have not learned how to reforest anything in this country yet, except to let it grow itself.

Q. You would not testify, or would not express an opinion, would you, that excessive grazing could not, under any circumstances, retard or prevent reforestration that might otherwise occur?

A. No, I would not say that, but I don't know but it might be advantageous especially in such instances as I have already related, you might get more reforestration than by having the surface of the ground covered by grass or other growth.

504 Q. Don't you think in a given area so many cattle were introduced that they ate off everything short and kept tramping down the surface for an indefinite time so that the efforts of young seedling trees to maintain themselves might be overcome?

A. I don't believe you could keep cattle on that long, unless you fenced them, to do that much harm.

Q. But suppose they did. Take the hypothetical case.

A. If you put them in like a corral of course you would tramp everything up that would attempt to grow at all,—if you eat all the grass off you will have some other growth come there, it might

be trees, it might be weeds, it might be the best way to seed it if you put the cattle on there to tramp in.

Q. Have you ever observed the effects of excessive overgrazing by animals upon the manner in which surface water run away and cut up the soil?

A. I have never seen anything of that kind; I have seen a great deal of damage done by roadways and trails, especially roads built up and down the streams, where in taking off timber it formed a drain-way from the main streams to the side streams, and from those to the draws, hollows, and to the tops of the hills.

Q. Don't you know it is a fact that where you have a steep slope that is well grown with a thick growth of grass, a sudden downpour of rain does not run away down that slope as rapidly as it would if it were a bare slope without any grass stems to retard the water, nor any grass stems to aid the water in sinking into the
505 soil; have you considered that?

A. Yes, sir, I think you are right about that.

Q. Think I am correct on it?

A. Yes, sir.

Q. You feel pretty strongly on this question of grazing, don't you, Senator?

A. Yes, sir, I do,—been studying it pretty closely.

Q. Don't you feel that you are so interested and have expressed yourself so often that you can hardly be an impartial witness on this subject?

A. I don't know; I presume I am subject to all the bias of other human beings.

Q. Well, your feelings on it amount to a conviction, don't they?

A. Not altogether, no, sir. There is so much about this that I don't know, and I feel myself that I don't know, and I am becoming pretty well convinced that a great many other people don't know; one of those things is about planting trees.

Q. Then would you think it is better to settle those questions in a court, or to have them settled by those who have a special training and employment for the purpose of making a study of it?

A. I think that it would be a very wise thing if they would start out and study this question and learn how, before they try to practice it.

Mr. WARD: I wish to offer Exhibit K.

It is hereby stipulated by the parties to this cause through their respective counsel that the testimony of the witnesses William W. Williams, Marcus Lafayette Shippie, William P. Finley, Harry M. Shuttleworth, U. M. Trout, W. L. Girdner, J. W. Zimmer-
506 man, Frederick Light and E. M. Ammons, taken before Clifford G. Rowe, Esq., upon the 8th day of October, 1908, and reduced to stenographic minutes by Miss Nellie Preston, Stenographer, pursuant to the consent of the said counsel, may be by the said stenographer transcribed into typewriting, and as so transcribed may be certified by the Examiner to the Court as testimony duly and properly taken in the cause, and that the signatures of the several witnesses to their respective testimony *is* hereby waived.

It is further stipulated by and between the respective parties hereto that the witness Harry H. French, who has heretofore testified on behalf of the complainant before Examiner Sanford C. Hinsdale, at Denver, may be now recalled for further testimony, and that his testimony to be given may be taken by the same stenographer here present, in stenographic minutes and subsequently transcribed into typewriting; that the signature thereto by the witness shall be, and the same is hereby waived, and that his testimony may be returned as the testimony for the complainant by and under the certificate of the said Clifford G. Rowe, Special Examiner, as evidence in the cause, subject to objections.

HARRY H. FRENCH, a witness produced on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. You are the same Harry H. French who testified heretofore in Denver?

507 A. Yes, sir.

Q. Supervisor of the Holy Cross Forest?

A. Yes, sir.

Q. Did you ever say to the defendant Light at any time last year that he might leave his cattle upon the reservation?

A. No, sir.

Q. Or any of them?

A. No, sir.

Q. Have you made a visit recently to the Light ranch and vicinity?

A. Yes, sir.

Q. For what purpose?

A. For examining the range and looking in particular, paying particular attention to the trails in that vicinity.

Q. Did you take any photographs of the trails?

A. Yes, sir.

(Witness produces photographs which are marked plaintiff's Exhibits R 1 to 6 inclusive.)

Q. Mr. French, I show you a photographic print marked "Plaintiff's R. 1, C. G. Rowe", another marked "Plaintiff's R. 2, C. G. Rowe, and four more marked "Plaintiff's R. 3, C. G. Rowe," "R. 4, C. G. Rowe," "R. 5, C. G. Rose," and "R. 6, C. G. Rowe," respectively, and will ask you to take these in their order and state who took them, and where they were taken, and what each one represents designating in your answer each particular photograph by the numerical number written on the back.

A. Exhibit R. No. 1. This photograph was taken by me.

Q. When?

A. On September 29, 1908, and shows a trail about thirty rods from the northwest corner of section 1, township 9 south,

508 Range 87 west.

Q. Where is it with reference to Mr. Light's ranch?

A. It is west of Mr. Light's ranch; it is about two miles, or two miles and a quarter.

Q. Did you say it was east or west of the Forest boundary line?

A. East, I said, about thirty rods.

Q. You said west, I think.

A. I meant east; if I said west I was mistaken.

Q. Has that any reference to either one of the trails that were marked upon the map, plaintiff's Exhibit 1, that was used in Denver?

A. Yes, sir.

Q. What?

A. With reference to the northern trail.

Q. Is it a portion of the northern trail?

A. Yes, sir.

Q. And what do you say as to whether or not that trail leads into the Reservation?

A. I say that it does; about thirty rods from where this picture was taken is where the trail enters the forest.

Q. And where does it lead in the other direction?

A. It leads to the northeast,—in a northeasterly direction.

Q. In what place with reference to the Light ranch?

A. About one-fourth of a mile below Mr. Light's north fence.

Q. At the watering place there?

A. Yes, sir, Sopris Creek—East Sopris Creek.

Mr. KNAEBEL: That is offered in evidence,—Exhibit R. 1.

(Witness continuing:) Photograph R. 2 was taken by me
509 on September 30th, 1908.

Q. State what that is.

A. This is a trail about three quarters of a mile to the south and west of Mr. Light's ranch.

Q. How far from the Reservation?

A. Something over a mile; I could not state the exact distance.

Q. Now do you know where that trail leads from, and where it goes to, with reference to the Light ranch on the one side or the reservation on the other?

A. This is a trail that leads from the opening in the southwest corner of Mr. Light's ranch where the bars are shown; it is in one of the other exhibits, I don't remember the number.

Q. How far does it extend southwesterly with reference to the Reservation?

A. It extends—the trail can be followed the entire distance to the Forest line.

Q. Now look at R. 4 and state what that is?

A. That is a trail leading west from East Sopris a short distance below Mr. Light's north fence.

Q. Is that a portion of the trail that you have previously testified leads into the Forest reserve?

A. No, the trail that leads into the Forest Reserve starts a little farther down Sopris Creek.

Q. What is this trail if you know?

A. This leads around Mr. Light's west fence.

Q. Around the northwest corner?

510 A. Around the northwest corner of Mr. Light's fence, and south.

Q. Do you know whether it leads to the trail from his southwest opening?

A. Yes, sir, it does.

Q. Now take R. 6 if you will; state what that is.

A. R. 6 is a photograph taken by me on September 29th.

Q. What does it represent?

A. It represents a trail just east of the Forest line; this is about thirty rods west from where the first photograph was taken which was exhibited. This is very nearly the boundary line.

Q. Thirty rods west from R. 1?

A. Yes, sir.

Q. Now please look at R. 3 and state what that is?

A. R. 3 is a photograph taken by me on September 30th. It shows a wood road on the east side of East Sopris Creek about, I should judge, a quarter of a mile below Mr. Light's north fence.

Q. Leading whither?

A. Leading down into the main Emma road.

Q. Now, then, take R. 5 and state what that is.

A. R. 5 is a photograph taken by me on September 30th, and was taken about twenty rods east of Exhibit R. 2.

Q. On the same trail?

A. On the same trail.

Mr. KNAEBEL: These are all offered in evidence.

Said exhibits were received without objection.

Cross-examination.

By Mr. WARD:

Q. Mr. French, I show you Exhibit R. 1. Please tell me again just where that location is, and the man on the horse.

511 A. About thirty rods east of the Forest line.

Q. In what section and township?

A. Section 1, township 9, south range 87.

Q. How far from the north line of section 1?

A. About thirty rods, or such a distance; I didn't measure the distance approximately.

Q. But is was south of Section 1,—inside of Section 1?

A. Yes sir.

Q. Somewhere in the northwest quarter of Section 1, Township 9 south range 87 west?

A. Yes.

Q. And you identify that as a part of the trail marked on Exhibit 1 before Commissioner Hinsdale as the most northerly trail?

A. Yes, sir.

Q. So you feel positive about that?

A. Yes, sir.

Q. I hand you here a plat made by myself, upon which is marked in dot-ed lines in my handwriting what purports to be a trail as

marked by McLaren. Do you remember anything about the location of that trail now since I have shown you this copy?

A. Yes, sir.

Q. From your present remembrance as refreshed by this copy, does the original exhibit with Commissioner Hinsdale show that the northerly trail enters the Forest Reserve from the north, from Section 35, or do you remember, township 8 south, range 87 west?

A. As I remember this it was stated that this was an approximate location of the trail.

512 Q. Yes, approximate. Do you consider the difference of half a mile or a mile much consequence?

A. It would not be that difference.

Q. But is it your recollection now, Mr. French, that the plat as marked shows the trail coming out to the north side of the Forest Reserve in Section 35, or do you remember?

A. I wouldn't say for sure.

Q. And if the trail is marked upon Exhibit 1 with Commissioner Hinsdale, as coming out of the southeast quarter of Section 35, township 8, south range 87 west, then the trail would be improperly marked upon the plat?

A. Yes, it was just approximated; it was so stated.

Q. It, as a matter of actual fact, comes out of another section of land, through another section, through Section 1?

A. The trail I have referred to?

Q. Yes.

A. Yes, it does.

Q. Instead of coming out in Section 35 it comes out in Section 1 of Township 9?

A. The one I have just referred to?

Q. The one you have identified as a northerly trail on the plat?

A. Yes, sir.

Q. Now how much of the trail there does the photograph show clearly in this R. 1?

A. R. 1?

Q. Yes.

A. Oh, possibly thirty or forty yards.

Q. And how far is it from that section, from the boundary of the Forest Reserve, to the north line of Mr. Light's fence where it leaves Sopris Creek, approximately?

513 A. From that trail to the north line?

Q. To the north corner of Mr. Light's fence?

A. Oh, it is considerably over two miles.

Q. So the photograph gives a very small portion of the entire trail?

A. Oh no, it would be impossible to take a picture that would give a photograph of the entire trail, because that is a rough country—broken.

Q. Did you follow that trail down from that point to the corner of Mr. Light's fence?

A. Very nearly all the way.

Q. Isn't it also a fact, Mr. French, that there are a large number of trails that branch off in all directions through that country?

A. Oh, I don't say that that is the only trail in that country.

Redirect examination.

By Mr. KNAEBEL:

Q. Exhibit R. 1 you say was taken on the trail in Section 1, of township 9 south, range 87; is that correct?

A. Yes, sir.

Q. Were you able to identify the spot where the photograph was taken, when you took it, as being within that section?

A. Yes, sir.

Q. And with reference to the northwesterly corner of that section, where was the photograph taken?

A. It was taken south and east from the northwest corner.

Q. Was it near to the northwesterly corner?

A. Yes, probably thirty rods, something like that; I didn't measure the distance.

Q. Now those trails that were laid down on the map Ex-
514 hibit 1 used in Denver, were put on there after you and McLaren got to Denver, by approximation, weren't they?

A. Yes, sir.

Q. And you so testified?

A. And so testified.

Q. What do you now find as to whether the northerly trail should have been shown as entering the Reservation through the northwest corner of Section 1, I have referred to, or in the approximate southeast corner of Section 35 of the next township on the north?

A. It should be shown as entering in Section 1, in the northwest of Section 1.

Q. Very little difference, is there not?

A. Very little, yes, sir.

Recross-examination.

By Mr. WARD:

Q. You will remember the testimony before Commissioner Hinsdale that the platting of the trail from memory placed the trail where it left Sopris Creek at about quarter of a mile away from the correct place. Do you remember that testimony?

A. I don't quite understand.

Q. Is it your recollection that the trail was accurately platted as to where it left Sopris Creek upon that plat?

A. Accurately platted?

Q. Yes.

A. Oh, the trail as shown on that map was platted from memory, and stated as being approximately correct.

Q. And you don't remember how far off it was estimated to be?

A. Not to exceed a quarter of a mile.

515 Q. That is where it began?

A. Yes, sir.

Q. Now if it is true that the plat shows a trail as ending in a different section and township, that would also indicate that it was wrong both at the beginning and at the end, wouldn't it?

A. Not necessarily so.

Q. Well, if the plat shows the trail as coming out of the Forest Reserve into Section 35 and township 8, whereas it came out of the Forest Reserve in Section 1, township 9, would the plat be right?

A. No.

Q. Did you follow that trail throughout its length down to where it leaves Sopris Creek?

A. Not the entire distance. I answered that question a while ago.

Q. Do you find the trails more strongly marked near water in that country up there?

A. Yes, I think they are.

Redirect examination.

By Mr. KNAEBEL:

Q. You have followed this trail, have you, on previous occasions?

A. Which trail do you have reference to there?

Q. The trail leading from the north of Mr. Light's to the Forest?

A. Yes, sir.

Q. And can you now state whether or not the trail which you have referred to in connection with these photographs is the same trail which you previously followed from near Mr. Light's place to the Reservation?

A. It is.

516 Recross-examination.

By Mr. WARD:

Q. Mr. French, have you at any time ever followed the trail shown in exhibit R 1 from where the photograph is taken, down to where it leaves Sopris Creek.

A. Yes, sir.

Q. When?

A. I couldn't state the exact date. I have ridden around over that trail.

UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Clifford G. Rowe, duly appointed Special Examiner in Chancery by the Circuit Court of the United States for the District of Colorado, do hereby certify that on the day mentioned in the proceedings and depositions in this cause I was attended by the counsel and witnesses aforesaid at my office in Glenwood Springs, Colorado; that said witnesses, to-wit, William W. Williams, Marcus Lafayette Shippie, William P. Finley, Harry M. Shuttleworth, U. M. Trout, W. L. Girdner, J. W. Zimmerman, Frederick Light and E. M. Ammons, each were first duly sworn according to law, as witnesses in the suit or cause in the caption hereto mentioned, and there examined before me orally by counsel; and by the consent of the parties by their several said solicitors the examinations and depositions of said wit-

nesses were severally stenographically written down and afterwards typewritten; that such examinations were had in the presence of the solicitors of the several parties hereto, and that said depositions, after being completed and typewritten, were duly sworn
517–524 to by the said witnesses, whose signatures thereto were waived by stipulation of counsel.

I further certify that the foregoing is a true statement of all the proceedings had before me on the day mentioned, in the matter of taking testimony herein, and that complainant's exhibits marked R 1 to R 6 inclusive, and defendant's exhibits marked A to K inclusive, were duly introduced in evidence, and are herewith returned into court.

CLIFFORD G. ROWE,
Special Examiner in Chancery.

Dated at Glenwood Springs, Colo., this 30th day of November, A. D. 1908.

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525 ROWE'S EX. K, DEF'T.

Holy Cross Forest Reserve.

Colorado.

(Second Proclamation.)

By the President of the United States of America.

A Proclamation.

Whereas, the Holy Cross Forest Reserve, in the State of Colorado, was established by proclamation dated August twenty-fifth, nineteen hundred and five;

And whereas, it appears that the public good would be promoted by adding to the said forest reserve certain lands, within the State of Colorado, which are in part covered with timber;

And whereas, it is provided by the Act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes", that "The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve";

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by the said act of Congress, do proclaim that the aforesaid Holy Cross Forest Reserve is hereby enlarged to include the said additional lands, and

that the boundaries of the reserve are now as shown on the diagram forming a part thereof;

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose to which this reservation for forest uses is inconsistent: Provided, that these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal to which this reservation is inconsistent continues in force; not excepting from the force and effect
525*a*–529 of this proclamation, however, any land within the boundary herein described, which has been withdrawn to protect the coal therein but this proclamation does not vacate any such coal land withdrawal; and provided that these exceptions shall not apply to any land embraced in any selection, entry or filing, which has been allowed or permitted to remain of record subject to the creation of a permanent reservation.

Warning is hereby given to all persons not to make settlement upon the lands reserved by this proclamation.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 1st day of March, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-first.

[SEAL.] THEODORE ROOSEVELT.

By the President:
ELIHU ROOT,
Secretary of State.

* * * * * * *

(Here follows diagram marked p. 525*b*.)